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THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 791

TO ESTABLISH THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY, WHICH SHALL BE HEADED BY A SOCIAL SECURITY BOARD, AND WHICH SHALL BE RESPONSIBLE FOR THE ADMINISTRATION OF THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM UNDER TITLE II OF THE SOCIAL SECURITY ACT AND THE SUPPLEMENTAL SECURITY INCOME PROGRAM UNDER TITLE XVI OF SUCH ACT

MARCH 1, 1989

Serial 101-3

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THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

WEDNESDAY, MARCH 1, 1989

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room B-318, Rayburn House Office Building, Hon. Andy Jacobs, Jr. (chairman of the subcommittee) presiding.

[The press release announcing the hearing, and a copy of the bill, H.R. 791, follow:]

FOR IMMEDIATE RELEASE
WEDNESDAY, FEBRUARY 15, 1989

SUBCOMMITTEE ON SOCIAL SECURITY #1
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

ANDY JACOBS, JR. (D., IND.),
CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A HEARING ON
H.R. 791,
A BILL TO ESTABLISH THE SOCIAL SECURITY ADMINISTRATION
AS AN INDEPENDENT AGENCY,
ON WEDNESDAY, MARCH 1, 1989, AT 10:00 A.M.,
IN ROOM B-318 RAYBURN HOUSE OFFICE BUILDING

Andy Jacobs, Jr. (D., Ind.), Chairman of the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a hearing on H.R. 791, The Social Security Administrative Reform Act of 1989, which would establish the Social Security Administration as an independent agency. The hearing will be held on Wednesday, March 1, 1989, in room B-318, Rayburn House Office Building, beginning at 10:00 a.m.

BACKGROUND:

The original (1935) Social Security Act established a Social Security Board composed of three members appointed by the President, with the advice and consent of the Senate. During the early 1950's, a series of reorganizations and legislative changes led to the establishment of the Social Security Administration (SSA) as a subordinate agency within the Department of Health and Human Services. SSA was given responsibility for administering the Medicare program when it was established in the mid-1960's, and the Supplemental Security Income (SSI) program in the mid-1970's. The reorganization of 1977 created a new Health Care Financing Administration (HCFA) which took the Medicare program out of SSA.

In recent years, SSA has experienced considerable instability in top leadership and administrative structure. SSA has had ten Commissioners in the last fifteen years, four of whom have served only as acting Commissioners. In addition, SSA has undergone several major reorganizations since 1975, which have displaced personnel at all levels and created repeated changes in responsibilities for program administration and policy development.

The January 1983 report of the National Commission on Social Security Reform endorsed in principle the idea of an independent agency, but recommended a feasibility study; a minority of five members stated that the independent agency should be implemented without further study. The Social Security Amendments of 1983 established a commission to report to the House Committee on Ways and Means and the Senate Committee on Finance on how to implement a proposal to make the Social Security Administration an independent agency under a bipartisan board appointed by the President. The Commission made its report to the two committees on June 12, 1984.

Following the Commission report, Representative Pickle introduced independent agency legislation in the 98th Congress. A similar bill was introduced in the 99th Congress and passed the House of Representatives as H.R. 5050 on July 22, 1986, by a vote of 401 to 0. In the 100th Congress, Representative Jacobs introduced H.R. 1036, which was generally identical to H.R. 5050. He reintroduced this legislation with minor changes in the 101st Congress as H.R. 791.

SCOPE OF THE HEARING:

The hearing will focus on H.R. 791, the Social Security Administrative Reform Act of 1989. H.R. 791 would create a more stable administrative structure for social security by establishing an independent agency with administrative responsibility for the old age, survivors and disability insurance programs (OASDI) and for SSI. The new agency would be governed by a bipartisan, three-member Social Security Board, which would establish broad legislative, regulatory, and administrative policy for the agency. The members of the Board would be appointed by the President with the advice and consent of the Senate for staggered six-year terms. The Chairperson of the Board would be designated by the President for a term of four years.

The Board would appoint an Executive Director to act as chief operating officer. The Executive Director would serve a four-year term and could be removed only for cause. The bill also establishes the positions of Deputy Director, General Counsel, Inspector General, and Beneficiary Ombudsman within the agency. In general, the bill would take effect July 1, 1990.

Witnesses are invited to comment on any aspect of H.R. 791. The Subcommittee is particularly interested in receiving comments on the adequacy of the bill's provisions to assure the independence of the new agency and to enhance its ability to meet the needs of social security and SSI beneficiaries.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Harriett Lawler or Diane Kirkland [(telephone (202) 225-1721)] by noon Thursday, February 23, 1989. In order to facilitate scheduling, requests should indicate the specific issues that the witness wishes to address and the relative priority of each issue if more than one issue is indicated. The request should be followed by a formal written request addressed to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff [(202) 225-9263)].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. THE FIVE-MINUTE RULE WILL BE STRICTLY APPLIED. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, those scheduled to appear before the Subcommittee are required to submit 100 copies of their prepared statements to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any interested person or organization may file a written statement for inclusion in the printed record. Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies by the close of business, Wednesday, March 15, 1989, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room B-316 Rayburn House Office Building, during the course of the public hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

I

101ST CONGRESS
1ST SESSION

H. R. 791

To establish the Social Security Administration as an independent agency, which shall be headed by a Social Security Board, and which shall be responsible for the administration of the old-age, survivors, and disability insurance program under title II of the Social Security Act and the supplemental security income program under title XVI of such Act.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1989

Mr. JACOBS (for himself, Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. FORD of Tennessee, Mr. GEPHARDT, Mr. DOWNEY, Mr. GUARINI, Mr. PEASE, Mr. MATSUI, Mr. ANTHONY, Mr. FLIPPO, Mr. DORGAN of North Dakota, Mr. DONNELLY, Mr. ANDREWS, Mr. LEVIN of Michigan, Mr. MOODY, Mr. ARCHER, Mr. CRANE, Mr. SCHULZE, Mr. MCGRATH, Mr. BROWN of Colorado, and Mr. CHANDLER) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To establish the Social Security Administration as an independent agency, which shall be headed by a Social Security Board, and which shall be responsible for the administration of the old-age, survivors, and disability insurance program under title II of the Social Security Act and the supplemental security income program under title XVI of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Social Security Administrative Reform Act of 1989".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Declaration of purpose.

TITLE I—ESTABLISHMENT OF THE SOCIAL SECURITY ADMINISTRATION

Sec. 101. Establishment of the Social Security Administration as a separate, independent agency; responsibilities of the agency.
Sec. 102. Social Security Board; Executive Director; Deputy Director; Beneficiary Ombudsman; other officers.
Sec. 103. Personnel; budgetary matters; facilities and procurement; seal of office.
Sec. 104. Transfers to the new Social Security Administration.
Sec. 105. Transitional rules.
Sec. 106. Effective dates.

TITLE II—CONFORMING AMENDMENTS AND RULES OF CONSTRUCTION

Sec. 201. Amendments to titles II and XVI of the Social Security Act.
Sec. 202. Other Amendments.
Sec. 203. Rules of construction.
Sec. 204. Effective dates.

SEC. 2. DECLARATION OF PURPOSE.

The purposes of this Act are as follows:

(1) to establish the Social Security Administration as an independent agency, separate from the Department of Health and Human Services;

(2) to charge the Social Security Administration with administration of the old-age, survivors, and disability insurance program and supplemental security income program;

(3) to establish a Social Security Board as head of the Social Security Administration and define the powers and duties of such Board;

(4) to establish an Executive Director of the Administration and define the powers and duties of the Executive Director; and

(5) to provide for delegating major management authorities to the Board and the Executive Director.

TITLE I—ESTABLISHMENT OF THE SOCIAL SECURITY ADMINISTRATION

SEC. 101. ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS A SEPARATE, INDEPENDENT AGENCY; RESPONSIBILITIES OF THE AGENCY.

Section 701 of the Social Security Act is amended to read as follows:

"SOCIAL SECURITY ADMINISTRATION

"SEC. 701. There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration. It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI.".

SEC. 102. SOCIAL SECURITY BOARD; EXECUTIVE DIRECTOR; DEPUTY DIRECTOR; BENEFICIARY OMBUDSMAN; OTHER OFFICERS.

(a) IN GENERAL.—Section 702 of the Social Security Act is amended to read as follows:

"SOCIAL SECURITY BOARD; EXECUTIVE DIRECTOR; OTHER OFFICERS

"Social Security Board

"SEC. 702. (a)(1)(A) The Administration shall be governed by a Social Security Board. The Board shall be composed of three members appointed by the President, by and with the advice and consent of the Senate. The members shall be chosen, on the basis of their integrity, impartiality, and good judgment, from among individuals who, by reason of their education, experience, and attainments, are exceptionally qualified to perform the duties of members of the Board.

"(B)(i) Except as provided in clauses (ii) and (iii), members of the Board shall be appointed for terms of six years. A member of the Board may be removed only pursuant to a finding by the President of neglect of duty or malfeasance in office. The President shall transmit any such finding to the Speaker of the House of Representatives and the Majority Leader of the Senate not later than five days after the date on which such finding is made.

"(ii) Of the members first appointed—

"(I) one shall be appointed for a term ending January 31, 1992,

"(II) one shall be appointed for a term ending January 31, 1994, and

"(III) one shall be appointed for a term ending January 31, 1996,

as designated by the President at the time of appointment. Such members shall be appointed after active consideration of recommendations made by the chairman of the Committee on Ways and Means of the House of Representatives and of recommendations made by the chairman of the Committee on Finance of the Senate.

"(iii) The President may not nominate an individual for appointment to a term of office as member of the Board before the commencement of the President's term of office in which the member's term of office commences. Any member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term. A member may, at the request of the President, serve for not more than one year after the expiration of his or her term until his or her successor has taken office. A member of the Board may be appointed for additional terms.

"(C) Not more than two members of the Board shall be of the same political party.

"(D) A member of the Board may not, during his or her term as member, engage in any other business, vocation, profession, or employment. A member of the Board may continue as a member of the Board for not longer than the 30-day

period beginning on the date such member first fails to meet the requirements of the preceding sentence.

"(E) Two members of the Board shall constitute a quorum, except that one member may hold hearings.

"(F) A member of the Board shall be designated by the President to serve as Chairperson of the Board for a term of 4 years.

"(G) The Board shall meet at the call of the Chairperson or two members of the Board.

"(2) Each member of the Board shall be compensated at the rate provided for level II of the Executive Schedule.

"(3) The Board shall—

"(A) govern by regulation the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI,

"(B) establish and oversee efficient and effective operations in the Administration,

"(C) devise long-term plans to promote and maintain the effective implementation of programs referred to in subparagraph (A),

"(D) appoint an Executive Director of the Administration, as described in subsection (b), to act as the chief operating officer of the Administration responsible for administering the programs referred to in subparagraph (A),

"(E) constitute three of the members the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, with the Chairperson of the Social Security Board serving as Chairperson of such Board of Trustees,

"(F) make annual budgetary recommendations relating to the Administration, including program costs of the supplemental security income program under title XVI, and defend such recommendations before the appropriate committees of each House of the Congress,

"(G) study and make recommendations to the Congress and the President as to the most effective methods of providing economic security through social insurance and supplemental security income and as to legislation and matters of administrative policy concerning the programs referred to in subparagraph (A),

"(H) provide the Congress and the President with the ongoing actuarial and other analysis undertaken by the Administration with respect to the programs referred to in subparagraph (A) and any other information relating to such programs, and

"(I) conduct policy analysis and research relating to the programs referred to in subparagraph (A).

"(4)(A) The Board may prescribe such rules and regulations as the Board determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Board shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.

"(B) The Board may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Board considers necessary or appropriate to carry out its functions, except that this subparagraph shall not apply with respect to any unit, component, or position provided for by this Act.

"(C) The Board may, with respect to the administration of the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI, assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees as the Board may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Board.

"Executive Director

"(b)(1) There shall be in the Administration an Executive Director who shall be appointed by the Social Security Board.

"(2)(A) The Executive Director shall be appointed for a term of four years, except that the individual first appointed to the office of Executive Director shall be appointed for a term ending September 30, 1995. An individual appointed to a term of office as Executive Director after the commencement of such term may serve under such appointment only for the remainder of such term. An individual may, at the request of the Chairperson of the Board, serve as Executive Director after the expiration of his or her term for not more than one year until his or her successor has taken office. An individual may be appointed as Executive Director for additional terms.

"(B) An individual may be removed from the office of Executive Director before completion of his or her term only for cause found by the Board.

"(3) The Executive Director shall be compensated at the rate provided for level II of the Executive Schedule.

"(4) The Executive Director shall—

"(A) constitute the chief operating officer of the Administration, responsible for administering, in accordance with applicable statutes and regulations, the

old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI,

"(B) maintain an efficient and effective operational structure for the Administration,

"(C) implement the long-term plans of the Board to promote and maintain the effective implementation of such programs,

"(D) make annual budgetary recommendations of the Administration for the ongoing administrative costs of the Administration and the program costs of the supplemental security income program under title XVI and defend such recommendations before the Board,

"(E) advise the Board and the Congress on the effect on the administration of such programs of proposed legislative changes in such programs,

"(F) serve as Secretary of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund,

"(G) report in December of each year to the Board for transmittal to the Congress concerning the administrative endeavors and accomplishments of the Administration, and

"(H) carry out such additional duties as are assigned by the Board from time to time.

Any reference to the Board in this Act or any other provision of law in connection with the exercise of a function of the Board which is delegated to the Executive Director pursuant to this section shall be considered a reference to the Executive Director.

"Deputy Director of Social Security

"(c)(1) There shall be in the Office of the Executive Director a Deputy Director, who shall be appointed by the Board. The Deputy Director shall be appointed for a term coextensive with the term of the Executive Director. An individual may be removed from the office of Deputy Director before completion of his or her term only for cause found by the Board.

"(2) The Deputy Director shall be compensated at the rate provided for level III of the Executive Schedule.

"(3) The Deputy Director shall perform such duties and exercise such powers as the Executive Director shall from time to time assign or delegate. The Deputy Director shall be Acting Executive Director of the Administration during the absence or disability of the Executive Director and, unless the Board designates another officer of the Government as Acting Executive Director, in the event of a vacancy in the office of the Executive Director.

"General Counsel

"(d)(1) There shall be in the Administration a General Counsel, who shall be appointed by and serve at the pleasure of the Board. The General Counsel shall be the principal legal officer in the Administration.

"(2) The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule.

"Inspector General

"(e)(1) There shall be in the Administration an Office of the Inspector General. Such Office shall be headed by an Inspector General appointed in accordance with the Inspector General Act of 1978.

"(2) The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule.

"Beneficiary Ombudsman

"(f)(1) There shall be in the Administration an Office of the Beneficiary Ombudsman, to be headed by a Beneficiary Ombudsman appointed by the Board.

"(2)(A) The Beneficiary Ombudsman shall be appointed for a term of five years, except that the individual first appointed to the office of Beneficiary Ombudsman shall be appointed for a term ending September 30, 1995. An individual appointed to a term of office as Beneficiary Ombudsman after the commencement of such term may serve under such appointment only for the remainder of such term. An individual

may, at the request of the Chairperson of the Board, serve as Beneficiary Ombudsman after the expiration of his or her term for not more than one year until his or her successor has taken office. An individual may be appointed as Beneficiary Ombudsman for additional terms.

"(B) An individual may be removed from the office of Beneficiary Ombudsman before completion of his or her term only for cause found by the Board.

"(3) The Beneficiary Ombudsman shall be compensated at the rate provided for level V of the Executive Schedule.

"(4) The duties of the Beneficiary Ombudsman are as follows:

"(A) to represent within the Administration's decisionmaking process the interests and concerns of beneficiaries under the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI;

"(B) to review the Administration's policies and procedures for possible adverse effects on such beneficiaries;

"(C) to recommend within the Administration's decisionmaking process changes in policies which have caused problems for such beneficiaries;

"(D) to help resolve the problems under such programs of individual beneficiaries in unusual or difficult

circumstances as determined by the Executive Director; and

"(E) to represent within the Administration's decisionmaking process the views of beneficiaries in the design of forms and the issuance of instructions.

"(5) The Board shall assure that the Office of the Beneficiary Ombudsman has staff sufficient to enable the Beneficiary Ombudsman to efficiently carry out his or her duties. Such staff shall be located in the regional offices, program centers, and central office of the Administration.

"(6) The annual report of the Board under section 704 shall include a description of the activities of the Beneficiary Ombudsman.".

(b) INTERIM AUTHORITY OF THE COMMISSIONER.—The President shall nominate for appointment the initial members of the Social Security Board not later than April 1, 1990. In the event that, as of July 1, 1990, all members of the Social Security Board have not been appointed, until all members of the Board have been appointed, the officer serving on July 1, 1990, as Commissioner of Social Security in the Department of Health and Human Services (or Acting Commissioner, if applicable), or such officer's successor, shall, while continuing to serve as Commissioner of Social Security (or Acting Commissioner) in such Department, serve as head of the Social Security Administration estab-

lished under section 701 of the Social Security Act (as amended by this Act) and shall assume the powers and duties of such Board and of the Executive Director under such Act (as amended by this Act).

SEC. 103. PERSONNEL; BUDGETARY MATTERS; FACILITIES AND PROCUREMENT; SEAL OF OFFICE.

(a) IN GENERAL.—Section 703 of the Social Security Act is amended to read as follows:

"ADMINISTRATIVE DUTIES OF THE SOCIAL SECURITY BOARD

"Personnel

"SEC. 703. (a)(1) The Social Security Board shall appoint such additional officers and employees as it considers necessary to carry out its functions. Except as otherwise provided in any other provision of law, such officers and employees shall be appointed, and their compensation shall be fixed, in accordance with title 5, United States Code.

"(2) The Board may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"(3) Notwithstanding any requirements of section 3133 of title 5, United States Code, the Director of the Office of Personnel Management shall authorize for the Administration a total number of Senior Executive Service positions which is greater than the number of such positions authorized in the Social Security Administration in the Department of Health

and Human Services as of immediately before the date of the enactment of the Social Security Administrative and Investment Reform Act of 1989, to the extent that the greater number of such authorized positions is specified in the comprehensive work force plan as established and revised by the Board under subsection (b)(1). The total number of such positions authorized for the Administration pursuant to such section 3133 shall not at any time be less than the number of such authorized positions as of immediately before such date.

"(4) In addition to the positions of the Administration in the Executive Schedule specified in section 702, the Administration is authorized six additional positions at level IV of the Executive Schedule and six additional positions at level V of the Executive Schedule.

"(5) All authority and functions of the Office of Personnel Management under section 4703 of title 5, United States Code (relating to demonstration projects), to the extent such section relates to personnel or positions in the Administration, shall be exercised exclusively by the Board. The Board shall report annually to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the demonstration projects undertaken by the Board pursuant to this paragraph.

"Budgetary Matters

"(b)(1) Appropriations requests for staffing and personnel of the Administration shall be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Board. The entire amount of appropriations provided for the administrative costs of the Administration shall be apportioned in the time period provided in title 31, United States Code, for apportionment and shall be apportioned for the entire period of availability without restriction or deduction by the apportioning officer or employee of the Office of Management and Budget or any other entity within the executive branch of the Federal Government, except as otherwise provided in this subsection.

"(2) The report submitted pursuant to section 704 shall include a section reflecting the use of budget authority provided to the Administration by quarters.

"(3)(A) Authority of the Administration for automated data processing procurement and facilities construction shall be provided in the form of contract authority covering the total costs of such acquisitions, to be available until expended.

"(B) Amounts necessary for the liquidation of contract authority provided pursuant to this paragraph are hereby made available from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance

Trust Fund to the extent that the Board, with the concurrence of the Secretary of the Treasury, determines that such amounts are not necessary to meet the current obligations for benefit payments from the Trust Funds.

"(C) Funds appropriated for the Administration to be available on a contingency basis shall be apportioned only upon the occurrence of the stipulated contingency, as determined by the Board and reported to each House of the Congress.

"Seal of Office

"(c) The Board shall cause a seal of office to be made for the Administration of such design as the Board shall approve. Judicial notice shall be taken of such seal.".

(b) DEMONSTRATION PROJECTS RELATING TO PERSONNEL MATTERS.—As soon as practicable after June 30, 1990, the Social Security Board and the Director of the Office of Personnel Management shall, in consultation with the Comptroller General, jointly implement one or more demonstration projects under this subsection. Under each such project, for the period of its duration—

(1) the Board may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such technical and professional employees as the Board considers appropriate whose compensation may be fixed by the

Board without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that such employees may not be paid at a rate in excess of the rate payable for level IV of the Executive Schedule, and

(2) the Director shall delegate to the Board (pursuant to section 1104 of title 5, United States Code, and subject to applicable limitations under such title relating to delegations under such section) functions relating to—

(A) recruitment and examination programs for entry level employees, and

(B) classification and standards development systems and pay ranges for those job categories identified by the Board in assuming such delegation.

The Comptroller General shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1991. Such report shall include an evaluation of the readiness of the Board to assume permanent and full authority over the functions described in paragraphs (1) and (2).

(c) DEMONSTRATION PROJECTS RELATING TO DELEGATIONS FROM ADMINISTRATOR OF GENERAL SERVICES.—As soon as practicable after June 30, 1990, the Social Security Board and the Administrator of General Services shall, in consultation with the Comptroller General, jointly implement one or more demonstration projects under this subsection. Under each such project, for the period of its duration, the Board shall have—

(1) all authorities permitted to be delegated under the provisions of Federal law codified under title 40 of the United States Code, relating to the acquisition, operation, and maintenance of the facilities needed for the administration of programs for which the Board is given responsibility under the Social Security Act,

(2) all authorities permitted to be delegated under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), relating to the lease, purchase, or maintenance of automated data processing equipment, and

(3) the authority to contract for any automated data processing equipment or services which the Board considers necessary for the efficient and effective operation of such programs.

The Comptroller General shall report to the Committee on Ways and Means of the House of Representatives and the

Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1991. Such report shall include an evaluation of the readiness of the Board to assume permanent and full authority over the functions described in paragraphs (1), (2), and (3).

SEC. 104. TRANSFERS TO THE NEW SOCIAL SECURITY ADMINISTRATION.

(a) FUNCTIONS.—There are transferred to the Social Security Administration all functions carried out by the Secretary of Health and Human Services with respect to the programs and activities the administration of which is vested in the Social Security Administration by reason of this Act and the amendments made thereby. The Social Security Board shall allocate such functions in accordance with sections 701, 702, and 703 of the Social Security Act (as amended by this Act).

(b) PERSONNEL, ASSETS, ETC.—(1) There are transferred from the Department of Health and Human Services to the Social Security Administration, for appropriate allocation by the Social Security Board in the Social Security Administration—

(A) the personnel employed in connection with the functions transferred by this Act and the amendments made thereby, as considered appropriate by the Board

in consultation with the Secretary of Health and Human Services, and

(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection with such functions.

(2) Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(3) The Secretary of Health and Human Services shall terminate—

(A) six positions in the Department of Health and Human Services placed in level IV of the Executive Schedule (or equivalent positions) other than positions specifically required under section 5315 of title 5, United States Code, or any other provision of law, and

(B) six positions in such Department placed in level V of the Executive Schedule (or equivalent positions) other than positions specifically required under section 5316 of such title or any other provision of law.

(c) ABOLISHMENT OF OFFICE OF COMMISSIONER IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

Effective upon the appointment of all initial members of the Social Security Board pursuant to section 702 of the Social Security Act (as amended by this Act)—

(1) the position of Commissioner of Social Security in the Department of Health and Human Services is abolished; and

(2) section 5315 of title 5, United States Code, is amended by striking the following:

"Commissioner of Social Security, Department of Health and Human Services.".

SEC. 105. TRANSITIONAL RULES.

(a) INTERIM AUTHORITY FOR APPOINTMENT AND COMPENSATION.—At any time on or after October 1, 1989—

(1) any of the officers provided for in section 702 of the Social Security Act (as amended by this Act) may be nominated and appointed, as provided in such section, and

(2) the Social Security Board, upon nomination and appointment of all of the members thereof, may prescribe regulations providing for the orderly transfer of proceedings before the Secretary of Health and Human Services to the Social Security Board.

Funds available to any official or component of the Department of Health and Human Services, functions of which are

transferred to the Social Security Board or the Social Security Administration by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this section until such time as funds for that purpose are otherwise available.

(b) CONTINUATION OF ORDERS, DETERMINATIONS, RULES, REGULATIONS, ETC.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognitions of labor organizations, certificates, licenses, and privileges—

(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or his delegate), and (B) which relate to functions which, by reason of this Act, the amendments made thereby, and regulations prescribed thereunder, are vested in the Social Security Board, and

(2) which are in effect immediately before July 1, 1990,

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Board.

(c) CONTINUATION OF PROCEEDINGS.—The provisions of this Act (including the amendments made thereby) shall not affect any proceeding pending before the Secretary of Health and Human Services immediately before July 1, 1990, with respect to functions vested (by reason of this Act, the amendments made thereby, and regulations prescribed thereunder) in the Social Security Board, except that such proceedings, to the extent that they relate to such functions, shall continue before such Board. Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Board, by a court of competent jurisdiction, or by operation of law.

(d) CONTINUATION OF SUITS.—Except as provided in this subsection—

(1) the provisions of this Act shall not affect suits commenced prior to July 1, 1990; and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Health and Human Services,

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shall abate by reason of the enactment of this Act. Causes of action, suits, actions, or other proceedings may be asserted by or against the United States and the Social Security Administration, or such official of such Administration as may be appropriate, and, in any litigation pending immediately before July 1, 1990, the court may at any time, on its own motion or that of a party, enter an order which will give effect to the provisions of this subsection (including, where appropriate, an order for substitution of parties).

(e) CONTINUATION OF PENALTIES.—This Act shall not have the effect of releasing or extinguishing any criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this Act, the amendments made thereby, and regulations prescribed thereunder) is vested in the Social Security Board.

(f) JUDICIAL REVIEW.—Orders and actions of the Social Security Board in the exercise of functions vested in such Board under this Act (and the amendments made thereby) shall be subject to judicial review to the same extent and in the same manner as if such orders had been made and such actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately before July 1, 1990. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Board

shall continue to apply to the exercise of such function by such Board.

(g) EXERCISE OF FUNCTIONS.—In the exercise of the functions vested in the Social Security Board under this Act, the amendments made thereby, and regulations prescribed thereunder, such Board shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of such functions in such Board, and actions of such Board shall have the same force and effect as when exercised by such Secretary.

(h) OPERATION OF TRANSITIONAL RULES IN THE EVENT OF INTERIM AUTHORITY IN THE COMMISSIONER.—For purposes of this section, in any case in which the powers and duties to be transferred to the Social Security Board are transferred to the Commissioner of Social Security (or acting Commissioner) in the Department of Health and Human Services for an interim period pursuant to section 102(b), the preceding provisions of this section shall apply with respect to the transfer of such powers and duties to and from such Commissioner (or acting Commissioner) pursuant to such section in the same manner and to the same extent as they would have applied to a direct transfer from the Secretary of Health and Human Services to the Social Security Board if all initial appointments to such Board had been made.

SEC. 106. EFFECTIVE DATES.

(a) IN GENERAL.—Sections 101, 102(a), 103, and 104 of this Act shall take effect July 1, 1990.

(b) EXCEPTIONS.—Sections 102(b) and 105 of this Act shall take effect October 1, 1989.

(c) NEW SPENDING AUTHORITY.—Any new spending authority provided by this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

TITLE II—CONFORMING AMENDMENTS AND RULES OF CONSTRUCTION

SEC. 201. AMENDMENTS TO TITLES II AND XVI OF THE SOCIAL SECURITY ACT.

(a) IN GENERAL.—Title II (other than section 201, section 218(d), section 231(c), section 226, and section 226A) and title XVI of the Social Security Act are each amended—

(1) by striking, wherever it appears therein, "Secretary of Health and Human Services" and inserting "Social Security Board";

(2) by striking, wherever it appears therein, "Department of Health and Human Services" and inserting "Social Security Administration";

(3) by striking, wherever it appears there in, "Department" (but only if it is not immediately succeeded by the words "of Health and Human Services", and only if it is used in reference to the Department of

Health and Human Services) and inserting "Administration";

(4) by striking, wherever it appears therein, each of the following words (but, in the case of any such word only if such word refers to the Secretary of Health and Human Services): "Secretary", "Secretary's", "his", "him", and "he", and inserting (in the case of the word "Secretary") "Social Security Board", (in the case of the word "Secretary's") "Board's", (in the case of the word "his") "the Board's", (in the case of the word "him") "the Board", and (in the case of the word "he") "the Board"; and

(5) by striking, wherever it appears therein, "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986".

(b) AMENDMENTS TO SECTION 201.—

(1) Section 201(a)(3) of such Act is amended by striking "Secretary of Health and Human Services" and inserting "Social Security Board".

(2) Section 201(c) of such Act is amended—

(A) in the first sentence, by striking "shall be composed of" and all that follows down through "ex officio" and inserting the following: "shall be composed of the members of the Social Security

Board, the Secretary of the Treasury, and the Secretary of Health and Human Services, all ex officio";

(B) by inserting after the first sentence the following new sentence: "The Chairperson of the Social Security Board shall be the Chairperson of the Board of Trustees."; and

(C) by striking "Commissioner of Social Security" and inserting "Executive Director of the Social Security Administration".

(3) Section 201(g)(1)(A) of such Act is amended—

(A) in clause (i), by striking "by him and the Secretary of Health and Human Services" and inserting "by him, the Social Security Board, and the Secretary of Health and Human Services", and by striking "by the Department of Health and Human Services and the Treasury Department" and inserting "by the Social Security Administration, the Department of Health and Human Services, and the Department of the Treasury";

(B) in clause (ii), by striking "method prescribed by the Board of Trustees under paragraph (4)" and inserting "applicable method prescribed under paragraph (4)", by striking "the Secretary of Health and Human Services" and inserting

"the Social Security Board and the Secretary of Health and Human Services", and by striking "the Department of Health and Human Services" and inserting "the Social Security Administration and the Department of Health and Human Services"; and

(C) by striking the last sentence and inserting the following: "There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title and title XVI for which the Social Security Board is responsible, the costs of title XVIII for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.".

(4) Section 201(g)(1) of such Act is further amended by striking subparagraph (B) and inserting the following new subparagraphs:

"(B) After the close of each fiscal year—

"(i) the Social Security Board shall determine (I) the portion of the costs, incurred during such fiscal year, of administration of this title and title XVI and of carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury, (II) the portion of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund, and (III) the portion of such costs which should have been borne by the Federal Disability Insurance Trust Fund, and

"(ii) the Secretary of Health and Human Services shall determine (I) the portion of the costs, incurred during such fiscal year, of administration of title XVIII which should have been borne by the general fund in the Treasury, (II) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and (III) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund,

except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures

incurred in carrying out such functions specified in section 232 shall be made pursuant to the applicable method prescribed under paragraph (4) of this subsection.

"(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Social Security Board and the Secretary of Health and Human Services shall each certify to the Managing Trustee the amounts which should be transferred from each of the Trust Funds to the general fund in the Treasury and from the general fund in the Treasury to each of the Trust Funds, in order to ensure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for (i) the part of the administration of this title and title XVI for which the Social Security Board is responsible, (ii) the part of the administration of this title and title XVIII for which the Secretary of Health and Human Services is responsible, and (iii) carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee shall transfer any such amounts in accordance with any certification so made.".

(5) Section 201(g)(2) of such Act is amended, in the second sentence, by striking "established and main-

tained by the Secretary of Health and Human Services" and inserting "maintained by the Social Security Board", and by striking "Secretary shall furnish" and inserting "Social Security Board shall furnish".

(6) Section 201(g)(4) of such Act is amended to read as follows:

"(4) The Social Security Board shall utilize the method prescribed pursuant to this paragraph, as of immediately before the date of the enactment of the Social Security Administrative and Investment Reform Act of 1987, for determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Board, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Board considers such action advisable, it may modify the method of determining such costs.".

(7) Section 201(i)(1) of such Act is amended to read as follows:

"(i)(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal

Supplementary Medical Insurance Trust Fund or to the Social Security Administration, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.".

(8) Subsections (j) and (k) of section 201 of such Act are each amended by striking "Secretary" each place it appears and inserting "Social Security Board".

(9) Section 201(l)(3)(B)(iii)(II) of such Act is amended by striking "Secretary" and inserting "Social Security Board".

(10) Section 201(m)(3) of such Act is amended by striking "Secretary of Health and Human Services" and inserting "Social Security Board".

(11) Section 201 of such Act is amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(c) AMENDMENTS TO SECTION 218.—Section 218(d) of such Act is amended by striking "Secretary" each place it appears in paragraphs (3) and (7) and inserting "Social Security Board".

(d) AMENDMENTS TO SECTION 222.—Section 222(d) of such Act is amended—

(1) in the last sentence of paragraph (1), by striking "Commissioner of Social Security" and inserting "Executive Director of the Social Security Administration"; and

(2) in the first sentence of paragraph (2), by striking "Commissioner of Social Security" and inserting "Executive Director".

(e) AMENDMENTS TO SECTION 225.—Section 225(b)(2) of such Act is amended by striking "Commissioner of Social Security" and inserting "Executive Director of the Social Security Administration".

(f) AMENDMENT TO SECTION 231.—Section 231(c) of such Act is amended by striking "Secretary determines" and inserting "Social Security Board and the Secretary jointly determine".

(g) AMENDMENT TO SECTION 1615.—Section 1615(d) of such Act is amended by striking "Commissioner of Social Security" and inserting "Executive Director of the Social Security Administration".

SEC. 202. OTHER AMENDMENTS.

(a) AMENDMENTS TO TITLE VII.—

(1) Section 704 of the Social Security Act is amended to read as follows:

"REPORTS

"SEC. 704. The Secretary and the Social Security Board shall make full reports to Congress, within 120 days

after the beginning of each regular session, of the administration of the functions with which they are charged under this Act. In addition to the number of copies of such reports authorized by other law to be printed, there is hereby authorized to be printed not more than 5,000 copies of each such report for use by the Secretary and Social Security Board for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the programs provided for in this Act.".

(2) Section 709(b)(2) of such Act is amended by striking "(as estimated by the Secretary)" and inserting ", as estimated by the Social Security Board or the Secretary (whichever administers the program involved),".

(3) Title VII of such Act is further amended by adding at the end thereof the following new section:

"DUTIES AND AUTHORITY OF SECRETARY

"SEC. 712. (a) The Secretary shall perform the duties imposed upon him by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security and as to legislation and matters of administrative policy concerning the programs administered by the Secretary and related subjects; except that nothing in this section shall be construed to require the Secretary to make studies or recommendations with

respect to programs administered by the Social Security Administration.

"(b) The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out the Secretary's functions under this Act. Appointments of attorneys and experts may be made without regard to the civil service laws.".

(4)(A) Title VII of such Act (as amended by paragraph (3)) is further amended by adding at the end thereof the following new section:

"ADVISORY COUNCIL ON THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

"SEC. 713. (a) During 1993 and every fourth year thereafter (but not before February 1 of such fourth year), the Social Security Board shall appoint an Advisory Council on the Old-Age, Survivors, and Disability Insurance Program for the purpose of reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program, and of reviewing the scope of coverage and the adequacy of benefits under, and all other aspects of, such program, including its impact on the public assistance programs under this Act.

"(b) Each such Council shall consist of a Chairman and 12 other persons, appointed by the Board without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers and represent self-employed persons and the public.

"(c)(1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Board shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Administration as it may require to carry out such functions.

"(2) Appointed members of any such Council, while serving on business of the Council (inclusive of travel time) shall receive compensation at rates fixed by the Board, but not exceeding $100 per day, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

"(d) Each such Council shall submit reports (including any interim reports such Council may have issued) of its find-

ings and recommendations to the Board not later than January 1 of the second year after the year in which it is appointed, and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds. The reports required by this subsection shall include a report with respect to the old-age, survivors, and disability insurance program under title II, of the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and of the taxes imposed under section 86 of such Code on social security benefits (within the meaning of section 86(d)(1)(A) of such Code). After the date of the transmittal to the Congress of the reports required by this subsection, the Council shall cease to exist.".

(B) Section 706 of such Act is amended—

(i) by striking the heading and inserting "ADVISORY COUNCIL ON HOSPITAL AND SUPPLEMENTARY MEDICAL INSURANCE";

(ii) in subsection (a), by striking "1969" each place it appears and inserting "1993", by striking "Social Security" and inserting "Hospital and Supplementary Medical Insurance", by striking "the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund,", by striking "Fund, and" and insert-

ing "Fund and", and by striking "the old-age, survivors, and disability insurance program and"; and

(iii) in subsection (d), by striking paragraph (1), and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(5) Sections 706, 709, and 710 of such Act are amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(b) AMENDMENTS TO TITLE XI.—

(1) Section 1101(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(10) The term 'Administration' means the Social Security Administration.".

(2) Section 1106(a) of such Act is amended—

(A) by inserting "(1)" after "(a)";

(B) by striking "Department of Health and Human Services" and inserting "applicable agency";

(C) by striking "Secretary" and inserting "head of the applicable agency"; and

(D) by adding at the end thereof the following new paragraph:

"(2) For purposes of this subsection and subsection (b), the term 'applicable agency' means—

"(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

"(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.".

(3) Section 1106(b) of such Act is amended—

(A) by striking "Secretary" and inserting "head of the applicable agency"; and

(B) by striking "Department of Health and Human Services" and inserting "applicable agency".

(4) Section 1106(c) of such Act is amended—

(A) by striking "the Secretary" the first place it appears and inserting "the Social Security Board or the Secretary"; and

(B) by striking "the Secretary" each subsequent place it appears and inserting "such Board or Secretary".

(5) Section 1107(b) of such Act is amended by striking "the Secretary of Health and Human Serv-

ices" and inserting "the Social Security Board or the Secretary".

(6) Section 1110 of such Act is amended—

(A) by striking "Secretary" each place it appears and inserting "Social Security Board"; and

(B) by striking "he", "his", "him", and "himself" each place they appear (except in subsection (b)(2)(A)) and inserting "the Board", "the Board's", "the Board", and "itself", respectively.

(7) Subsections (b) and (c) of section 1127 of such Act are each amended by striking "Secretary" and inserting "Social Security Board".

(8) Section 1128(f) of such Act is amended by inserting after "section 205(g)" the following: ", except that, in so applying such sections and section 205(l), any reference therein to the Social Security Board or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(9) Section 1131 of such Act is amended—

(A) by striking "Secretary" each place it appears and inserting "Social Security Board";

(B) in subsection (a)(1)(A), by adding "or" at the end thereof;

(C) in subsection (a)(1)(B), by striking "or" at the end thereof;

(D) by striking subsection (a)(1)(C);

(E) by redesignating subsection (a)(2) as subsection (a)(3);

(F) by inserting after subsection (a)(1) the following new paragraph:

"(2) the Secretary makes a finding of fact and a decision as to the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or"; and

(G) by striking "he" in the matter in subsection (a) following paragraph (3) (as so redesignated) and inserting "the Social Security Board".

(10) Section 1155 of such Act is amended by striking "(to the same extent as is provided in section 205(b))." and inserting "(to the same extent as beneficiaries under title II are entitled to a hearing by the Social Security Board under section 205(b)). For purposes of the preceding sentence, subsection (l) of section 205 shall apply, except that any reference in such subsection to the Social Security Board or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively.".

(11) Sections 1101, 1106, 1107, and 1137 of such Act are amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(c) AMENDMENTS TO TITLE XVIII.—

(1) Subsections (a) and (f) of section 1817 of such Act are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Social Security Board".

(2) Section 1840(a) of such Act is amended—

(A) in paragraph (1), by striking "Secretary" and inserting "Social Security Board", and by adding at the end thereof the following new sentence: "Such regulations shall be prescribed only after consultation with the Secretary."; and

(B) in paragraph (2), by striking "Secretary of Health and Human Services" and inserting "Social Security Board".

(3) Section 1872 of such Act is amended by inserting after "title II" the following: ", except that, in applying such provisions with respect to this title, any reference therein to the Social Security Board or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(4) Sections 1869(b)(1) and 1869(c) of such Act and the last sentence of section 1876(c)(5)(B) of such Act are amended by inserting after "section 205(g)" the following: ", except that, in so applying such sections and section 205(l), any reference therein to the Social Security Board or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(5) Sections 1817, 1862, and 1886 of such Act are amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(d) AMENDMENT TO TITLE XIX.—Section 1910(b)(2) of such Act is amended, in the first sentence, by inserting after "section 205(g)" the following: ", except that, in so applying such sections and section 205(l), any reference therein to the Social Security Board or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(e) AMENDMENT TO TITLE XX.—Section 2002(a)(2)(B)(iii) of such Act is amended by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986".

(f) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(1) by adding at the end of section 5313 the following new items:

"Members, Social Security Board (3).

"Executive Director, Social Security Administration.";

(2) by adding at the end of section 5314 the following new item:

"Deputy Director, Social Security Administration.";

(3) by adding at the end of section 5315 the following new items:

"General Counsel, Social Security Administration.

"Inspector General, Social Security Administration.

"Additional officers, Social Security Administration (6).";

(4) by adding at the end of section 5316 the following new items:

"Beneficiary Ombudsman, Social Security Administration.

"Additional officers, Social Security Administration (6)."; and

(5) by striking "Secretary of Health, Education, and Welfare" each place it appears in section 8141 and inserting "Social Security Board".

(g) AMENDMENT TO FOOD STAMP ACT OF 1977.—Section 6(c)(3) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(3)) is amended by inserting "the Social Security Board and" before "the Secretary of Health and Human Services".

(h) AMENDMENT TO TITLE 14, UNITED STATES CODE.—Section 707 of title 14, United States Code, is amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Social Security Board".

(i) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) Subsections (c)(1), (c)(2)(E), (g)(1), (g)(2)(A), and (g)(2)(B) of section 1402 of the Internal Revenue Code of 1986 are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Social Security Board".

(2) Section 3121(b)(10)(B) of such Code is amended by striking each place it appears "Secretary of Health and Human Services" and inserting "Social Security Board".

(3) Subsections (d) and (f) of section 6057 of such Code are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Social Security Board".

(4) Section 6103(l)(5) of such Code is amended—

(A) by striking "Department of Health and Human Services" and inserting "Social Security Administration"; and

(B) by striking "Secretary of Health and Human Services" and inserting "Social Security Board".

(5) Section 6511(d)(5) of such Code is amended by striking "Secretary of Health and Human Services" and inserting "Social Security Board".

(j) AMENDMENTS TO TITLE 38, UNITED STATES CODE.—Section 3005 of title 38, United States Code, is amended by striking "Secretary of Health and Human Services" and "Secretary" each place they appear and inserting "Social Security Board".

(k) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 9(a)(1), by striking "and" at the end of subparagraph (U), and by adding at the end thereof the following new subparagraph:

"(V) of the Social Security Administration (to the extent provided in the Social Security Administrative and Investment Reform Act of 1989), the functions of the Inspector General of the Department of Health and Human Services relating to the administration of the old-age, survivors, and disability insurance program under title II of the Social Security Act and of the supplemental security income program under title XVI of such Act; and";

(2) in section 11(1), by striking "or" after "Commission" and inserting a semicolon, and by inserting after "Board;" the following: "or the Social Security Board;"; and

(3) in section 11(2), by striking "or" after "Information Agency,", and by inserting after "Veterans' Administration" the following: ", or the Social Security Administration;".

SEC. 203. RULES OF CONSTRUCTION.

(a) REFERENCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title or title I or a provision of law amended by either such title), regulation, rule, record, or document to the Department of Health and Human Services with respect such Department's functions

under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act, such reference shall be considered a reference to the Social Security Administration.

(b) REFERENCES TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title or title I or a provision of law amended by either such title), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under such programs, such reference shall be considered a reference to the Social Security Board.

(c) REFERENCES TO OTHER OFFICERS AND EMPLOYEES.—Whenever any reference is made in any provision of law (other than this title or title I or a provision of law amended by either such title), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under such programs, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration.

SEC. 204. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the preceding provisions of this title shall take effect July 1, 1990.

(b) EXCEPTIONS.—Subsections (f)(1), (f)(2), (f)(3), (f)(4), and (k) of section 202 shall take effect October 1, 1989, and section 202(a)(4) shall take effect January 1, 1993.

(c) NEW SPENDING AUTHORITY.—Any new spending authority provided by this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

Chairman JACOBS. Well, let's start it up.

The statements of the Honorable Hank Brown, the Honorable Bill Archer, the Honorable Dick Schulze, the Honorable Mary Rose Oakar, and the Honorable Thomas J. Tauke will be made a part of the record, without objection.

[The opening statements of Mr. Brown and Mr. Schulze follow; the statements of Mr. Archer, Ms. Oakar, and Mr. Tauke appear in submissions for the record at the end of the hearing.]

The Honorable Hank Brown
Opening Statement for Social Security Hearing 3/1/89

Mr. Chairman, I appreciate the importance of H.R. 791, a bill to make the Social Security Administration an independent agency, and thank todays' witnesses for their participation.

Because the Social Security Administration is the single largest component of the Department of Health and Human Services, it is appropriate that we plan the "divorce" thoughtfully. We will be leaving the Department primarily with health care, thus providing the health community its own cabinet level Department. SSA, on the other hand, will lack that voice.

SSA should, however, gain more direct control of the resources needed to administer the Social Security and Supplemental Security Income programs.

On balance, I support the concept of an independent agency, but I have some concerns about the management structure of the independent agency and ask that our witnesses comment on it.

The original Congressional panel report to this subcommittee in 1984 recommended a "strong single administrator", to be appointed by the President for a four-year term, coinciding with the President's term.

Assisting the Administrator would be a part-time 9 member bipartisan Advisory Board appointed for staggered six-year terms.

The Administrator would have responsibility for the operations and overall management of the agency's programs and would represent the Administration before Congress. The Board would oversee management and assess policy issues, providing stability, continuity and institutional memory.

H.R. 791, however, is modeled more along the lines of the old Social Security Board which was in effect until 1949. Initially that Board operated within as an independent agency. The Board consisted of three members, not more than two from the same political party. They served staggered 6 year terms, and the Chairman of the Board was appointed by the President. Administrative tasks were delegated to a chief administrator, the Board intending to confine its activities to policy problems.

According to the Congressional Research Service, it didn't work that way. A 1984 CRS report stated: "From the outset, however, there was no clear demarcation of responsibility between the Board and the executive director so that conflict ensued. The board consistently violated its own decision to stick to policy questions. This was particularly true in the appointment of personnel. Changes in Board membership did not alter this situation ... early board members never seriously regarded the executive director as the administrative head of the organization with a distinct administrative authority of his own. Board members felt it their right and duty to intervene directly in administrative matters."

CRS cited "Launching Social Security", written by McKinley and Frase:

> "As an administrative device for making policy decisions and directing operations during this period, the board system led to indecision, delay, and guerrilla warfare among certain of the top staff and their followers within the bureaus. The frequent and interminable board meetings during the first eight months particularly reflect the difficulty of three men reaching conclusions that were often about small matters."

The question I have for those who support H.R. 791, which incorporates the concept of a full-time three member Advisory Board, is why they believe it will work any better today. Wouldn't a larger, part-time board, and a stronger Chief Executive Officer provide better management?

Mr. Chairman, I look forward to today's hearing.

OPENING STATEMENT OF HON. DICK SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I am pleased to join you in opening our hearing on establishing the Social Security Administration as an independent agency.

Thousand of Americans rely on the Social Security Administration to pay monthly benefits when they retire or become disabled, and pay their survivors when they die. To countless Americans, Social Security is their protection against poverty in old age. The vital importance of this program is undisputed.

The Social Security Administration has been criticized in the past for being a less than efficient bureaucracy. Problems with the supplemental security income program, backlogs in processing, and more importantly, high turnover contributed to the Social Security Administration's struggle to function as a premier governmental agency.

The Social Security Administration, however, has recently made significant improvements in providing better service to the public. Continuing computer modernization has reduced the time it takes to process Social Security cards, post earnings records and pay monthly benefit checks.

Today, we will analyze the necessity as well as the benefits of having the Social Security Administration as an independent agency. This idea is not new. I hope this hearing brings us closer to determining the best way for the Federal Government to deliver vital income security services to our citizens.

Mr. Chairman, I look forward to hearing today's testimony.

Chairman JACOBS. Our first witness before the subcommittee is our colleague, the Honorable J.J. Pickle, Austin, Texas, personal representative of a President of the United States, former chairman of the Social Security Subcommittee; and your 5 minutes have expired. [Laughter.]

STATEMENT OF HON. J.J. PICKLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PICKLE. Good morning, Mr. Chairman and members of the subcommittee. I ask consent to present my full statement and ask that it be included in the record.

Chairman JACOBS. Without objection.

Mr. PICKLE. Mr. Chairman, I am glad that you have taken this important issue up for the 101st Congress. For several years, I have supported the proposition that Social Security should be made an independent agency. I continue to support such a step because I believe it is necessary if we are to ever have a stable Social Security system.

Today the public, particularly our young, does not have strong confidence in the Social Security system. Despite the steady increase in the funds, in spite of the reforms we made in 1983 ensuring the long term solvency of the system, too many people still doubt that the Social Security system will provide them with meaningful benefits when it comes their time to retire. They just simply don't believe that the bureaucrats or the Government—as they call it—is going to be strong enough to withstand all the pressures and keep those funds intact.

The public is continually bombarded with claims that the system will not work. Almost daily, we are told that the trust funds are growing too large and that the money is being used to hide the Federal deficit, or that the ratio of workers to retirees is too low and that the system will eventually be bankrupt. Not a season goes by without front page speculation that the Federal budget crisis will force the administration and the Congress to use these Social Security funds.

In addition, the public regularly hears that the administration of the program is being adversely affected by the unrelated policy objectives of each passing administration. In the past 15 years, as you pointed out, Mr. Chairman, in your advance release, we have had 10 different Social Security Commissioners. They just don't seem to stick around long enough to learn the way around their own bureaucracy; and then they are gone.

Finally, whoever is Commissioner, Democrat or Republican, regardless of administration, once they decide on a course of action they cannot even publicly say that it ought to be done. First, that recommendation has got to be cleared through all the various departments of the HHS itself. Then it has got to go to the OMB or possibly OPM; and then, when that recommendation has been signed off on, it goes down to the White House and goes to the various levels of bureaucracy within the White House establishment itself.

It is just interesting to me that when we had Secretary Sullivan up for confirmation, they had a lot of reservations and a lot of questions to ask about him, day after day, about his position on AIDS or his position on abortion. And I have just wondered out loud, I wonder how many questions were asked of him about the administration of the Social Security program, which is the largest department within the HHS. I rather doubt—very little attention was paid to it.

Well, because these problems of internal weakness and outside interference have persisted under several different administrations, I don't think we see any signs of this opposition or this controversy ending. I think now is the time for the Congress to act.

I think we can respond to the public concern about our ability to meet the long term Social Security deficits and solvency; and we can do it best by setting up an independent agency. The interesting thing to me, Mr. Chairman, is that most of the people on the committee, I think, favor this. The House has passed it once. I have introduced it. We had a study. We required it in the 1983 bill when we passed it. Then, after that was reported favorably, we have introduced legislation, you have introduced legislation. We have gotten it through the House. But for some reason or another, it always gets bottled up before we finally get out.

I think it is probably best for us to take Social Security out of the Department of Health and Human Services, make it an independent agency, and, I believe, in a way that it becomes bipartisan. It is so sensitive as an issue, that one party or the other can play politics with it, or at least that claim is made. If we can take it out and make it an independent agency, I think the country is better off.

So I urge, Mr. Chairman, that you do that.

Chairman JACOBS. Mr. Schulze.

Mr. SCHULZE. I would like to welcome my colleague and my dear friend before the subcommittee and perhaps just tell him that I happened to be watching C-SPAN during that confirmation hearing and I can assure you that the gentleman was asked extensively about Social Security. I realize some of those other things were more written up in the papers; and I am sure you didn't have a chance to watch that because you are very busy.

Mr. PICKLE. No, I did not.

Mr. SCHULZE. But I can assure you that it was discussed in depth, as it should be.

Mr. PICKLE. Well, as should have been, asked a lot of questions.

Mr. SCHULZE. Sure.

Mr. PICKLE. But I am glad he was.

Mr. SCHULZE. I thank the gentleman for his testimony.

Chairman JACOBS. I am grateful for the testimony from our colleague.

Mr. PICKLE. Thank you, Mr. Chairman.

Chairman JACOBS. Ms. Hardy, I believe you are next in terms of those who are here. Ms. Hardy, Commissioner of the Social Security Administration.

STATEMENT OF HON. DORCAS R. HARDY, COMMISSIONER OF SOCIAL SECURITY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY MICHAEL C. CAROZZA, DEPUTY COMMISSIONER FOR POLICY AND EXTERNAL AFFAIRS, AND LOUIS D. ENOFF, DEPUTY COMMISSIONER FOR PROGRAMS, SOCIAL SECURITY ADMINISTRATION

Ms. HARDY. Thank you, Mr. Chairman. We are here today to give you a brief statement on our views of the independent agency issue.

I am accompanied by Michael Carozza, Deputy Commissioner for Policy and External Affairs, and Lou Enoff, Deputy Commissioner for Programs.

I have a longer piece that I have submitted for the record.

I think the question before you today is whether making Social Security an independent agency would be the most efficient and effective means of managing what we consider is a pretty successful domestic program. And the answer to that question, I believe, is "no."

Based on my experience of almost 3 years now as Commissioner, I firmly believe that making us an independent agency would hinder and not assist our efforts to maintain and improve our record of public service.

Separating us from the Department of Health and Human Services, I think, would undercut the President's role as the manager of the executive branch and weaken some critical links to other HHS agencies. SSA needs to keep its energies focused on meeting its public service goals, on providing good management, on motivating and meeting the needs of its employees, and obtaining and efficiently utilizing resources.

We think we have met these goals within HHS. An independent agency would not make any of these tasks any easier for us and indeed, I think, could provide a hindrance to attainment of these goals in the future. Consequently, we do oppose making Social Security an independent agency.

Now, there have been proposals, as Mr. Pickle pointed out, to make SSA an independent agency for a long time. They arose in the 1970's as a result of concern by some that Social Security policy decisions were being dictated by political and by short-term budgetary considerations and that SSA faced serious systems and organizational problems.

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I believe that these concerns are not viable today. There is broad bipartisan agreement that changes in Social Security should be evaluated on the merits and not be advanced for just budgetary or partisan political purposes. The bipartisan support that produced the historic 1983 amendments seems to be the way that Social Security issues should and will be handled in the future. The bipartisan approach should be used to address all of our really important Social Security questions, for example, how the Social Security programs are reflected in the budget and how the trust fund balances are invested.

Further, I think that the enormous improvements that Social Security has made in the quality of the service that it provides and the efficiency that we have achieved rebut any argument that independent agency status is essential for administrative or operational purposes.

Additionally, as Mr. Pickle pointed out, some believe that public confidence would be increased if SSA were independent. However, the Staats panel that was put together after the 1983 amendments concluded that confidence depends on the financial soundness of the program and the public's perception that changes in the program are made with due regard to the immediate and the long term effect on benefit structure. And largely due to the current financial soundness of the system, our public confidence ratings have risen from a low of about 30 percent of the workers not having confidence to now over 60 percent of the workers in this country having confidence in Social Security. And we expect public confidence to continue to rise without us being an independent agency.

Now, we also believe that the independent agency would have serious disadvantages for us as well as the public. It would limit, we think, our accountability within the executive branch and would thus undermine the role of the President in terms of coherent economic and social policies for all of us.

We have vital links that we have put together with HHS agencies, such as our links with Medicare. Those will probably become even more critical as we look to the future. And there is growing need to coordinate cash payments provided under the Social Security programs with other programs within the Department.

Although the administration opposes the independent agency status for SSA, I do want to mention specifically what we consider to be a very fatal flaw in H.R. 791, and that is the provision that creates a bipartisan three-person executive to head Social Security.

Having served as Commissioner for nearly 3 years and faced many difficult decisions that managing one of the largest businesses in the world does require, I believe strongly that a bipartisan board to head SSA really is a prescription for indecision and inaction, just when the agency is making some really strong forward strides in the service that it provides the American public. And this was agreed to as well by not only the Staats panel, but also the General Accounting Office.

So we do believe that taking us out of Health and Human Services would not significantly help SSA accomplish its mission or promote efficient and effective delivery of our services to our older citizens.

Thank you very much.

[The statement of Ms. Hardy follows:]

STATEMENT OF DORCAS R. HARDY, COMMISSIONER OF SOCIAL SECURITY

I am pleased to have the opportunity to discuss the Chairman's bill, which would make the Social Security Administration (SSA) an independent agency in the executive branch. All of us can agree that the goal of SSA should be to provide high-quality service to the American public in an efficient manner. Through the hard work and dedication of SSA managers and staff, I believe that we have made strong progress toward that goal in the last 3 years.

The question before you today, however, is whether making SSA an independent agency would be the most efficient and effective means of managing the most successful domestic program in our Nation. The answer to that question is clearly "no." Based on my experience as Commissioner of Social Security for 3 years, I firmly believe that making SSA an independent agency would hinder our efforts to continue and improve our record of high-quality service to the public.

To provide the most effective and efficient public service, it is critical that SSA keep its energies clearly focused on that goal, be well managed, motivate and meet the needs of its employees, and obtain sufficient resources. This has and can continue to be done within the Department of Health and Human Services (HHS). Independent agency status would not make the task any easier and, indeed, is squarely against recognized concepts of good management. What independent agency status would do is invite, and expose SSA to, direct pressure from interest groups, States, and members of Congress.

Further, separating SSA from HHS would undercut the President's role as manager of the executive branch, would weaken important links with other HHS agencies, and would eliminate many administrative economies inherent in a large Government Department. Consequently, the Administration opposes making SSA an independent agency.

In the remainder of my statement, I would like to discuss the impetus behind the independent agency movement over the years and the consequences, as I see them, of making SSA independent.

Background of Independent Agency Concept

The Social Security program was administered in its first years as an independent agency, but by 1939, before actual payment of monthly benefits began, it became an integral part of the Federal Security Agency (FSA), the forerunner of today's Department of Health and Human Services (HHS). The FSA was established to group agencies with related missions under common leadership in order to coordinate policymaking, management, and operations. It was also recognized that it was impractical to expect the President to manage directly all the major programs and agencies of the Federal Government without having them grouped under Cabinet officers.

Proposals to again make SSA an independent agency arose in the 1970's as a result of a concern on the part of some that Social Security policy decisions were being dictated by partisan political and short-term budgetary considerations and that SSA faced serious systems and organizational problems.

In 1983, the Social Security amendments of that year established a Joint Study Panel of three experts to recommend how an independent SSA could be implemented. As you know, the panel did not address the pros and cons of an independent Social Security agency. Rather, as required by its statutory mandate, the panel dealt extensively with the various administrative and organizational issues that would arise if SSA were established as

an independent agency and cautioned that the panel's recommendations regarding how an independent agency might be structured should not be interpreted as an endorsement of the concept.

The panel recommended that if SSA were made independent, it be headed by a single administrator, administer only the old-age, survivors, and disability insurance (OASDI) and Supplemental Security Income (SSI) programs, have a part-time advisory board, and be delegated certain management authorities in the personnel, administrative services, and data processing areas.

Although bills to make SSA independent have been considered in each Congress in recent years, none has been enacted. The reason is, in part, that there is no evidence which suggests that making SSA independent would improve its capacity to do its job effectively.

Intent of Independent Agency Advocates

The history of the independent agency movement indicates that its sponsors have wanted to accomplish two things--(1) insulate the Social Security program from possible political or budgetary pressure, and (2) improve the quality of service the Agency provides. In reality, the Social Security program has become so large--21 percent of Federal expenditures in fiscal year 1989--and so visible--39 million people receive benefits and 120 million pay Social Security taxes--that it is not possible or desirable to restrict debate about any change in the program.

Moreover, I believe that there is broad bipartisan agreement that changes in Social Security should be evaluated on their merits and not be advanced for budgetary or partisan political purposes. The model of bipartisan support that produced the historic 1983 Social Security amendments seems to me to be the way Social Security issues should and will be handled in the future. I believe this bipartisan model should be used to address all important policy questions--for example, how Social Security programs are reflected in the budget, how the Social Security trust funds are counted for Gramm-Rudman-Hollings deficit reduction target purposes, and how trust fund balances are invested. Making SSA an independent agency would have no effect on how these issues are raised and handled in the political arena.

From a public service perspective, SSA's performance overall in getting its work done is significantly better today than it was a few years ago, when the Agency was threatened as never before with enormous backlogs and delays in processing work. With the help of systems modernization, which is now substantially complete, and streamlined processes and procedures, SSA has eliminated its work backlogs and now provides quicker, more accurate service to beneficiaries.

I think that the enormous improvement SSA has made in the quality of service it provides and the efficiency we have achieved rebut any argument that independent agency status is essential for administrative or operational reasons.

Disadvantages of Making SSA Independent

First, I would note that H.R. 791 purports to establish SSA as an "independent agency" within the executive branch with limits on its accountability within that branch. In this respect the bill is a direct affront to the role of the President as Chief Executive and undermines his ability to develop coherent economic and social policies for the Nation.

Independent agency status would have costs to SSA and the public. Establishing SSA as an independent agency would weaken important links between the Agency and the President and between SSA and parallel agencies within HHS. These links are valuable to SSA and to the public we serve.

As a Cabinet member, the Secretary of HHS reports directly to the President, who is, in turn, directly accountable to the electorate. The President and the Secretary of HHS are thus in an excellent position to provide policy leadership on Social Security issues, as in 1981, when President Reagan took the unusual step of appointing a bipartisan commission to resolve Social Security financing problems. Moreover, the independent agency proposals under consideration would weaken SSA's ties with executive branch support agencies under the President's leadership. Those agencies have the expertise and resources to help us with our space and procurement needs, in the case of the General Services Administration, and personnel needs, in the case of the Office of Personnel Management.

SSA also benefits from its close ties to other agencies under the HHS umbrella. As you know, many agencies in HHS are concerned with issues closely related to those dealt with by SSA. To name a few, the Administration on Aging funds social services for the elderly, the National Institute on Aging is concerned with health programs for the aged, and the Health Care Financing Administration's Medicare and Medicaid programs are vital in providing health care to older citizens and persons with disabilities.

SSA is particularly close to the Health Care Financing Administration (HCFA), since OASDI and Medicare share many eligibility and coverage provisions and their recordkeeping processes are highly integrated. Likewise, SSI and the Medicaid programs share certain eligibility requirements and procedures. Service to beneficiaries under all of these programs could suffer if an organizational change made it more difficult for SSA and HCFA to coordinate both policy and operations.

The vital link forged between SSA and other HHS agencies will become more critical in the future. As the aging of the baby boom generation occurs, more policy and service coordination between the agencies will be necessary, and there will be a growing need to coordinate the cash payments provided through the OASDI and SSI programs with the health and social services provided through all parts of HHS.

In addition to the administrative disruption, another practical consideration is that removal of SSA from HHS would eliminate many of the administrative economies inherent in a large Government department, requiring expenditure of trust fund monies for the establishment of duplicative and expensive payroll, personnel, and other support structures now operating efficiently in HHS.

Disadvantages of a Plural Executive

The fact that independent status would in no way help SSA do a better job and would create serious new problems for the Agency are sufficient reasons to oppose, we believe, H.R. 791. However, the bill is fatally flawed, we think, in creating a bipartisan, three-person executive to head SSA. In 1984, the Congressional Research Service (CRS) prepared an extensive report to the Congressional Study Panel on making SSA independent. Based on considerable research, the report stated that ". . . the concept of the plural executive to administer executive agencies has never enjoyed wide support." The report notes that George Washington observed early in our Nation's history that ". . . wherever, and whenever one person is found adequate to the

discharge of a duty by close application thereto it is worse executed by two people, and scarcely done at all if three or more are employed therein."

The history of the three-person Social Security Board in the 1930's bore out President Washington's observation. Even though the Social Security Board was made up of experienced, conscientious people who set out to avoid the widely publicized problems the Tennessee Valley Authority Board had suffered, they could not do so. A detailed account of the Board's experience reviewed in the CRS report concluded that "By the end of March 1937, only one major administrative conclusion appeared clearly warranted: namely, that the Board structure was inadequate for operating the Social Security program." Interestingly, all of the Board members and the executive director they had selected agreed in this conclusion. Two years later, in 1939, the administrator of the newly established Federal Security Agency was given authority over the Social Security program even though the Board remained until 1946 to perform administrative functions.

Having served as Commissioner of Social Security for nearly 3 years and faced the difficult decisions that managing one of the largest businesses in the world requires, I think that a bipartisan board to head SSA is a prescription for indecision and inaction just when the Agency is making strong forward strides in the service it provides the American people. Independent agency status would cause serious problems for SSA; a plural executive would almost certainly prove as ineffective as the initial Social Security Board. The 1984 Congressional Study Panel addressed this issue and recommended that SSA, if made independent, continue to be headed by a single Administrator.

In addition, the General Accounting Office testified before this committee in 1985 that it believed the best leadership structure for an independent SSA would be a strong single Administrator at the head of the Agency, assisted by a board that would be advisory and have no role in SSA operations.

Conclusion

For the reasons I have discussed, we do not believe that taking SSA out of the Department of Health and Human Services would help SSA accomplish its mission and such a change could seriously hinder close coordination in delivery of related Federal programs to the public. Therefore, the Administration strongly opposes legislation to make SSA an independent agency.

Chairman JACOBS. Thank you, Ms. Hardy. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman. Thank you, Commissioner.

Commissioner, are you aware of positions of any former Commissioners on this issue? Has anybody polled them, or are you aware of their positions?

Ms. HARDY. I think it is divided, but I would like Mr. Enoff, who has the institutional memory here as to—this discussion has gone on for a long period of time.

Mr. ENOFF. I would say that some Commissioners I have worked with, generally would have supported that. The one instance that I recall of a Commissioner who did not support that was Commissioner Driver. And I think Commissioner Driver, when asked that question, had a very interesting response that caused me to think and, I guess, really reconsider some of the virtues of independence, so to speak.

And Mr. Driver said, having served in veterans affairs as an independent Cabinet official and having been at Social Security under a Department Secretary, that he thought the advantages of having the Secretary to report to outweighed the independent status, that much of the—this is not a direct quote—political back and forth was removed from him, enabling him to concentrate more on the job of Commissioner.

And yet, when he needed a spokesperson at Cabinet level with the White House or with the Congress, he had a Secretary that would go to bat. And that certainly was perhaps a different opinion than I had heard from others, but I think an opinion that should cause one to think about whether independence is all it is cracked up to be.

Mr. SCHULZE. In thinking of that position, I come back with the answer, there is probably no agency which has more input from the community at large than Social Security. And so it seems to me that there are an awful lot of pressure groups or influential input from citizens groups on this issue than probably any other issue that comes before Congress.

Madame Commissioner, with your 3 years of experience, if you were appointed as an executive director of an independent agency, what kind of a board or group do you think would function best to, in effect, guide your day-to-day relationship and tell you what policies to implement and where and how to go?

Would a quadrennial commission—would a three-man board—what, if you had your choice—if you could wave a magic wand — what kind of setup do you think would be most efficient?

Ms. HARDY. Given that, as we all appreciate, I do not think we should be independent, I think the bipartisan, three-member board that is currently being discussed with this particular bill before you all would make it extremely difficult to administer the agency.

There have been other discussions throughout, lots of things that have been written, because Social Security is so important. We look for a lot of advice, counsel and whatever, trying to get everybody's views—so perhaps we should look more toward some kind of a bigger advisory board that is 9 or 12 persons, that is bipartisan, that has everybody included, has terms and whatever. But the administrator or the executive director or whomever—Commission-

er—still should be appointed by the President and be part of that current administration, and not be responsible on a day-to-day basis to a three-person board. A board would be an extremely difficult way to run the Social Security agency from the operational side, as well as the policy side.

Mr. SCHULZE. Would you think 9 members would be ideal; 9, 12, 15, or doesn't that make an awful lot of difference?

Ms. HARDY. I don't think that makes a lot of difference. I think, personally, it is probably a little bit easier to have a little bit smaller. You are able to pull people together on a monthly or a quarterly basis or whatever. So 9 members, 12——

Mr. SCHULZE. How about the makeup of that board?

Ms. HARDY. I had not given any particular consideration to it. I think it would have to be in sync with how you all look at it—what about the board of trustees and how does that fit into this? Now clearly with the 1984 amendments, the three Cabinet Secretaries have been added to by the two public trustees, one from each party—and that, we think, has worked very well. So the integration of that with an advisory board would be very important as to how all that pulls together.

Mr. SCHULZE. Do you think it would work?

Ms. HARDY. Clearly, it would be very difficult but it could work a lot better having an advisory board than having a management board, we think.

Mr. SCHULZE. How about the criticism that you have those layers of bureaucracy? If you want to make a decision or you want to change something, you have to go through all of those steps?

Ms. HARDY. I think we could name any independent agency in Government—in the U.S. Government here in town or elsewhere—that still will have those constraints. We still have an Office of Management and Budget. We still have an Office of Personnel Management. We still have GAO, GSA, and all of the other organizations with which we would have to interact. So I don't think the layers——

Mr. SCHULZE. Do you feel frustrated by that bureaucracy or is it something that you accept and it works as efficiently as you——

Ms. HARDY. You make it work and you not only make your bureaucracy work with you, but you make the other part of the bureaucracy move around and make that work as well.

Mr. SCHULZE. Thank you. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Moody.

Mr. MOODY. Thank you. Ms. Hardy, thank you for your testimony. What were the arguments in your own words given by the study that was conducted in 1983 and reported in 1984? They obviously recommended to us that something like this be enacted. Can you summarize what you feel is a fair interpretation of their reasons and then rebut them if you would care to?

Ms. HARDY. Well, the Staats panel was commissioned, as I understand it, by the 1983 amendments not to discuss the pros and cons; but was told, "We don't care about the pros and cons, we want to know how we should implement it."

So there was no choice and they made it very clear that they didn't necessarily support or not support the concept. But their implementation that they came up with was a single executive and

some additional advisory people—and had some good ideas in it if it were to go forward in that direction.

Mr. MOODY. So do you think the public has not had an adequate, dispassionate examination of the arguments, pro and con, to this point?

Ms. HARDY. I don't think——

Mr. MOODY. In sort of a formal setting like a study?

Ms. HARDY [continuing]. That's correct. I don't think there has been any particular pro or con recent discussion of the issue.

Mr. MOODY. What about the question of turnover? I understand there have been 10 Commissioners in the last 15 years. There's been a tremendous sense of discontinuity caused by that kind of changing of the guard. How do you address that?

Ms. HARDY. Well, I am the 10th Commissioner of Social Security in 50 years. Yes, there has been significant turnover over the last 15 years because they were appointed as acting; and both recent administrations have taken a significant period of time to either appoint a Commissioner, or have left in-acting persons, or switched acting persons.

So, as I have said to the GAO when I first came in, because they had also been looking at this whole issue and the issue of management at Social Security, I don't think it is a question of the number of Commissioners, per se. It is the question of whether, even if you have a Commissioner every year, they have that authority and they are the Commissioner as opposed to the Acting Commissioner.

And the bureaucracy does not work as well unless it is the Commissioner. I don't think this will help—it is the question of timing. I don't think an independent agency would have any correlation with the number.

Mr. MOODY. Well, let us assume those Commissioners were full Commissioners instead of only Acting. You still had 10 different individuals serving in the last 15 years; is that right?

Ms. HARDY. It is probably not quite that many; but it is a significant number.

Mr. MOODY. Since 1972, there have been 10 Commissioners, I guess?

Ms. HARDY. Since 1981 to 1988, there have been one Acting and two Commissioners. So that is three in the last 8 years. And there was a little bit of chaos with those other seven in the late 1970's, yes.

Mr. MOODY. Well, couldn't that happen again?

Ms. HARDY. I suppose it could. But the independent agency concept would not negate that—wouldn't——

Mr. MOODY. You don't think it would provide additional continuity that is not now available?

Ms. HARDY. No.

Mr. MOODY. You know the terms of this bill, of course, provide 6-year terms which would provide a certain stability that would transcend political fortunes of the White House. It seems to me that might provide more stability. You wouldn't agree?

Ms. HARDY. Well, that is the 6-year term for the three persons running the board. I think the three persons running Social Security would be chaos in itself.

Mr. MOODY. You don't like a troika model?

Ms. HARDY. No, sir.

Mr. MOODY. But the Executive Director would have a fixed, 4-year term. This probably would have avoided the kind of 10 and 15 ratio that we had seen recently—if we had people with set 4-year terms.

Ms. HARDY. True. But you don't need a troika in order to have a 4-year term.

Mr. MOODY. What is wrong with a board to establish that bipartisan flavor? You said earlier in your testimony, quote, bipartisan models should be used to address all important policy questions arising in Social Security?

Ms. HARDY. Right.

Mr. MOODY. Yet you oppose establishing a bipartisan board.

Ms. HARDY. Because as I——

Mr. MOODY. To oversee whether it is three or nine, or whatever number—why do you oppose that?

Ms. HARDY. Because as I interpret what is currently before you, it is that that three-person board is going to really be running the agency. It is more of an operational job. It is not just policy. It is not just advisory. It is not just a question of how can we best approach simplification of the SSI program, or how can we look at some of the policy issues like our policy council looks at. But it is really running the agency; and that would be extremely difficult.

The advisory board is one thing. But three people running SSA is too difficult.

Mr. MOODY. Can I have another second? I see my light is on.

Ms. Hardy, I understand entirely what you just said. Shouldn't your testimony then be focused on making sure that this isn't the way the bill is structured, that in fact the Executive Director does run the agency and accounts to a board the way a CEO in a corporation accounts to a board?

Ms. HARDY. That would be a position after I had to give up that there should not be an independent agency.

Mr. MOODY. OK, now, but you see that as substantially improved, since that seems to meet the brunt of your criticism.

Ms. HARDY. I see. I guess my first problem is that I see no reason for an independent agency. Obviously you all are in the business of legislating. And if that were the case, then I would hope that it would not have this kind of very bifurcated way of operating the agency.

Mr. MOODY. Thank you very much.

Chairman JACOBS. Before we proceed, there are several seats in the front here that are marked reserved. But the persons for whom they are reserved don't seem to be here; so if any of the guests want to take them, go ahead.

Just for the purpose of legislative history, it is the intent of this legislation that the three-member board be a policy setting board and not an administrative board; and that the Executive Director, in fact, be the person who administers the policy.

One thing that concerns me is I think that in your testimony you may have said that there may have been a time when partisanship played some role in the administration of the Social Security system, but that that has long since vanished. Is that a fair characterization? Did you say that?

Ms. HARDY. I don't think that is quite what I said, but——

Chairman JACOBS. Something like what you said?

Ms. HARDY. There have been a lot more partisan discussions in the past than there are currently. That is what I was trying to say.

Chairman JACOBS. I will be happy to confirm that. I can't imagine anybody with whom this subcommittee could have worked with more cooperatively than we have worked with you.

Ms. HARDY. Thank you, sir.

Chairman JACOBS. And I am personally grateful for your cooperation; and I think that you have had a very good operation in consequence of it.

But the point that Mr. Moody made remains the central question; and that is if it once happened, could it happen again? And the answer, of course, is "yes." The only way you could prevent that sort of thing is to take some measure like this, as I see it. When you depend on personalities—ruled by a person rather than by law and by institution—in the words of Thomas More, it seems to me that you take your functions by a short route to chaos.

And I perceive that there was such chaos in the early part of this decade, particularly in the area of Social Security disability. Things went wrong, badly wrong; even wrong enough, as I recall, to result in some suicides. So I just commend that to your consideration; and say as long as it is—if the independent agency is created—and as long as it is a board controlled by a party other than mine, I would not the least bit be displeased if the new Executive Director were the person who is sitting in front of me now.

Comment about that?

Ms. HARDY. Thank you, sir.

Chairman JACOBS. Would you second that? [Laughter.]

Ms. HARDY. I am not sure I do. Could I ask what kind of an example might be in the back of a person's mind about what would be another independent agency that we are trying to model us after—and is there one that is very good? We have not been able to find one that has this kind of board approach or anything else with the Executive Director versus the Presidential appointee.

Chairman JACOBS. Well, in all candor, I think that this whole idea emerged from the unfortunate experience at the earlier part of this decade, and I think that is all the answer you need.

Ms. HARDY. OK.

Chairman JACOBS. No further questions. We thank you.

Ms. HARDY. Thank you, sir.

Chairman JACOBS. Each time, it is a drive, I guess, and we appreciate it.

Yes, Mr. Delfico with the U.S. General Accounting Office is here. Welcome back to the subcommittee, sir.

STATEMENT OF JOSEPH F. DELFICO, DIRECTOR, INCOME SECURITY ISSUES, HUMAN RESOURCES DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ROLAND MILLER AND ROBERT ROSENSTEEL

Mr. DELFICO. Thank you, Mr. Chairman.

With me today are Mr. Roland Miller and Mr. Robert Rosensteel who have prepared this testimony, and I would like to submit the

full testimony for the record and present a brief summary, with your permission.

Since we last testified in 1985, many changes to the agency's operational environment have occurred, which could affect the perceived need for independence.

The financial crisis surrounding the title II trust funds has subsided. The threat of wholesale automated data processing (ADP) systems failures has been reduced, and our extensive work to identify SSA's management weaknesses reported in March of 1987 has, we feel, provided a blueprint for management improvement at SSA.

The agency, in response to our review, has embarked on an extensive set of management and public service improvements that are, we feel, already paying some dividends.

Our works show that most of SSA's longstanding problems were caused by the lack of strong, stable leadership, adequate management processes, sharp focus, and in our view, a lack of consistent priorities. Corrections to these problems, however, we feel would occur whether SSA was independent or whether it continued to be a part of HHS.

H.R. 791 provides leadership for an independent SSA in the form of a three-member board, as you know, and it is assisted by an Executive Director. As we have testified in the past, we feel a more effective form of leadership would be a single administrator.

It is our conviction that strong and stable leadership is essential for sustained action in solving SSA's management and operational problems, particularly as the agency starts addressing the technological, social and demographic challenges in the 21st century.

Many of SSA's problems have been exacerbated by the fact, as you have heard already this morning, that they have had 10 Commissioners or Acting Commissioners and have experienced at least 5 major reorganizations causing many redirections in operating policy and associated staff morale problems. More continuity is also needed, we think, for senior career officials.

For example, since 1979, seven different officials have been in charge of SSA's systems organization, which has affected organizational continuity and hindered effective ADP systems planning and modernization.

A Social Security advisory board could provide institutional memory on policy issues and would give the administration and the Congress an opportunity to receive bipartisan views on policy issues.

We continue to believe the board should be advisory in nature and have no role in the day-to-day operations of the agency.

Past studies have shown that boards generally are not as effective as single administrators. In those cases where an administrator has been appointed to manage an agency under the direction of a board, the board frequently becomes involved in the organization's management, which ultimately causes problems in day-to-day operations.

Given the problems SSA has experienced in its operations, and the frequent need for direct, swift, and clear management action, we do not believe that it should have a management structure that

could result in diffused and, sometimes, confused direction over its operations.

A single administrator assisted by top career executives trained to deal with day-to-day operations would maximize the potential for excellence in the management at SSA.

The central management agencies of the executive branch have an appropriate role in broad policy development and oversight of agency operations, but these roles should be carried out as unobtrusively as possible. Thus, we support the removal of detailed controls, which is the intent of this legislation, but in a way that does not erode the central agencies' ability to apply policy regulations consistently throughout the Federal Government.

We support the bill's objectives to delegate specific management authorities to SSA on a demonstration basis, so that SSA will be given the opportunity to show that it has the requisite management experience to effectively carry them out.

However, we oppose the provisions requiring the Comptroller General to carry out the inherently contradictory functions of both consulting on the implementation of the demonstration and reporting on their effectiveness.

We support the provisions in H.R. 791 that allow contract authority for computer purchases and facility construction to cover the total cost of such acquisitions and to be available until expended, but this authority should be provided only after SSA's currently inadequate financial controls have been substantially strengthened.

While such funding may increase the likelihood that projects will be completed without interruption once they have been approved, there is no assurance that Government will get what it pays for without a reliable financial information system and reporting on costs and performance.

We agree with the requirement that SSA's requests for staffing and personnel be based on a comprehensive work force plan.

We have concerns regarding the requirements for proposed demonstration projects relating to personnel matters, however. We believe that the proposals are overly broad with no limits on the number of employees participating in, or the time period for the projects.

The timeframe for evaluating the results and reporting appears to be too short to permit valid conclusions.

Finally, we note that OPM already has authority to permit similar demonstration projects.

We believe that raising the current level of pay for SSA's key technical and professional staff, as the bill would allow, should go a long way toward attracting and retaining quality people. However, we are concerned that the legislation appears to grant the board authority to appoint staff totally at its own discretion without specific regulations or criteria to protect the interests of Government.

While there may be a legitimate need for SSA to increase the number of senior executive service and executive-level positions, SSA should be required to justify the extent of such an increase in accordance with OPM regulations.

We also believe that the amount of salary that can be paid to hire high quality managers and technical staff under the bill is too low.

As we have stated on many occasions in the past, executive pay should be raised. It is difficult to attract highly skilled technical managers from the private sector, where pay scales are much higher.

SSA officials have repeatedly told us that they have had difficulties attracting high quality executives, because of inadequate pay levels.

Although we strongly believe that the single administrator is the most effective leadership for SSA, if the Congress decides to implement a board, we would like to make the following comments.

The provisions of H.R. 791 that delineate the responsibilities of the board, the Executive Director, and the newly created Beneficiary Ombudsman should be clarified. We have some suggestions here on how to clarify that.

Title I of the bill prescribes that the board govern, by regulation, programs under title II and title XVI of the Social Security Act and establish and oversee efficient and effective operations in SSA.

It appears to us that there could be some duplication in the responsibilities for the administrator of the programs. The role of the Executive Director to direct operations needs to be more clearly delineated.

We are also concerned about two other matters.

First, the bill appears to provide authority for the board to establish SSA's organizational structure, an authority that might be better given to the Executive Director, who will have to direct operations under the structure.

Second, the bill gives the board authority for developing long-range plans for the agency. While we agree that the board should develop policy for SSA, we believe that the Executive Director should do its operational planning.

The current Commissioner has developed an operational plan for SSA through the year 2000, and we believe it should be continued, should there be a change in leadership.

Mr. Chairman, that concludes my testimony. We would be happy to answer any questions you may have at this time.

[The statement of Mr. Delfico follows:]

STATEMENT OF JOSEPH F. DELFICO, DIRECTOR OF INCOME SECURITY ISSUES, HUMAN RESOURCES DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

I am pleased to present our views on H.R. 791, a bill to make the Social Security Administration (SSA) an independent agency.

The bill would, among other things, remove the Retirement, Survivors, and Disability Insurance and Supplemental Security Income programs from the Department of Health and Human Services (HHS) and create an independent Social Security Administration headed by a three-member bipartisan board. It would also establish a Beneficiary Ombudsman within SSA and authorize SSA certain exemptions from the budget, personnel, and administrative requirements of central management agencies (OMB, OPM, and GSA).

Few goals are more important than those embodied in this legislation--to increase public confidence in Social Security--and we clearly support this goal. As we stated in our testimonies on this issue before this Subcommittee on July 30, 1984, and April 23, 1985, independence for SSA would have advantages by improving access to the Executive Office of the President through the elimination of any impediments created by HHS, and the bill could enhance the opportunity for improved management. However, should SSA become independent, it will lose cabinet-level sponsorship, which can be an important factor, and this should be weighed against the advantages of agency independence.

Since we last testified, many changes to the agency's operational environment have occurred which could affect the perceived need for independence. The financial crisis surrounding the title II trust funds has subsided, the threat of wholesale automated data processing (ADP) systems failures has been reduced, and our extensive work to identify SSA's management weaknesses, reported on in March 1987, has, we feel, provided a blueprint for management improvement. In response to our management review, SSA's current leadership embarked on an extensive set of management and public service improvements that are already paying dividends.

Our work showed that most of SSA's longstanding problems were caused by the lack of strong, stable leadership, adequate management processes, sharp focus and consistent priorities. Corrections of these problems, in our view, can occur whether SSA is independent or continues to be part of HHS.

STRONG AND STABLE LEADERSHIP NEEDED

H.R. 791 provides leadership for an independent SSA in the form of a three-member board assisted by an Executive Director to direct operations. As we have testified in the past, we believe a more effective form of leadership would be a single administrator.

It is our conviction that strong and stable leadership is essential for sustained action in solving SSA's management and operational problems, particularly as the agency starts addressing the technological, social, and demographic challenges of the 21st century. Many of SSA's problems have been exacerbated by the fact that since 1973, SSA has had 10 commissioners or acting commissioners and has experienced at least five major reorganizations causing many redirections in operating policy and associated staff morale problems. More continuity is also needed for the senior career officials. For example, since 1979, seven different officials have been in charge of SSA's systems organization, which has affected organizational continuity and hindered effective ADP systems planning and modernization. The best leadership structure for an independent SSA in our view would be a strong single

Administrator as the head of the agency, appointed for an 8-year, fixed term and assisted by an advisory board for policy matters.

A social security advisory board could provide institutional memory on policy issues, and would give the administration and the Congress an opportunity to receive bipartisan views on policy issues. We continue to believe that the board should only be advisory in nature, and should have no role in the day-to-day operations of SSA.

Past studies have shown that boards generally are not as effective as single Administrators. In those cases where an Administrator has been appointed to manage an agency under the direction of a board, the board frequently became involved in the organization's management, which ultimately caused problems in day-to-day operations. Given the problems SSA has experienced in its operation, and the frequent need for direct, swift, and clear management action, we do not believe that it should have a management structure that could result in diffused and sometimes confusing direction over its operations. A single Administrator, assisted by top career executives trained to deal with the agency's day-to-day operations, would maximize the potential for excellence in SSA's management.

INCREASED MANAGEMENT AUTHORITY WILL REQUIRE RELATED EXPERTISE AND CONTROLS

The central management agencies of the executive branch have an appropriate role in broad policy development and oversight of agency operations. But these roles should be carried out as unobtrusively as possible. Thus, we support removal of detailed controls, which is the intent of this legislation, but in a way that does not erode the central agencies' ability to apply policy and regulations consistently throughout the federal government. We support the bill's objectives to delegate specific management authorities to SSA on a demonstration project basis so that SSA will be given the opportunity to show that it has the requisite management expertise to effectively carry them out.

However, we oppose the provisions requiring the Comptroller General to carry out the inherently contradictory functions of both consulting in the implementation of these demonstration projects and reporting on their effectiveness. While evaluating the effectiveness of executive agency programs is a primary function of GAO, helping to implement those programs would appear to undermine our ability to independently evaluate executive branch activities.

We support the provision in H.R. 791 that allows contract authority for computer purchases and facilities construction to (1) cover the total cost of such acquisitions and (2) be available until expended. But this authority should be provided only after SSA's currently inadequate financial controls have been substantially strengthened. While such funding may increase the likelihood that projects will be completed without interruptions once they have been approved, there is no assurance that the government will get what it pays for without reliable financial information and reporting on costs and performance.

We agree with the requirement that SSA requests for staffing and personnel be based upon a comprehensive work-force plan. Our ongoing work shows that SSA needs to improve its work measurement system for it to be a reliable basis for work-force, planning, but we believe SSA can make these improvements.

We have concerns regarding the requirements for proposed demonstration projects relating to personnel matters. We believe the proposals are overly broad, with no limits on the number of employees participating in or the time period for the projects.

The time frame for evaluating the results and reporting appears to be too short to permit any valid conclusions. Finally, we note that the Office of Personnel Management (OPM) already has authority in chapter 47 of title 5, U.S.C., to permit similar demonstration projects.

We believe that raising the current level of pay for SSA's key technical and professional staff, as the bill would allow, should go a long way toward attracting and retaining quality people. However, we are concerned that the legislation appears to grant the board authority to appoint staff totally at its own discretion, without specific regulations or criteria to protect the interests of the government. While there may be a legitimate need for SSA to have an increased number of senior executive service and executive-level positions, SSA should be required to justify the extent of such an increase in accordance with OPM regulations.

We also believe that the amount of salary that can be paid to hire high-quality managers and technical staff under the bill is too low. As we have stated on many occasions in the past, executive pay levels should be raised. It is difficult to attract highly skilled technical managers from the private sector, where pay scales are much higher. SSA officials have told us repeatedly that they have had difficulties attracting high-quality executives because of inadequate pay levels.

We also have concerns over the provision in the bill that would restrict OMB's involvement in the apportionment process. We do not favor constraining OMB's authority under the Antideficiency Act. But, as we recognized in our testimony of April 1985, the mechanism can sometimes be used to the detriment of efficient agency operations. As we stated, the Congressional Budget and Impoundment Control Act of 1974 already has provisions to deal with certain actions the President may want to take that are inconsistent with congressional direction. We do not believe the provision in H.R. 791 restricting OMB's authority to use the apportionment process is needed. But recognizing the concern over how OMB might use the process, we offered the following suggestion. The provision in the bill could be revised to require OMB to report to the Congress any restriction of or deduction from SSA's apportionment along with an explanation of why OMB took that action.

RESPONSIBILITIES OF KEY OFFICIALS SHOULD BE CLARIFIED

Although we strongly believe that a single Administrator is the most effective leadership for SSA, if the Congress decides to implement a board, we have the following comments. The provisions of H.R. 791 that delineate the responsibilities of the board, the Executive Director, and the newly created Beneficiary Ombudsman should be clarified. Title I of the bill prescribes that the board govern, by regulation, programs under title II and XVI of the Social Security Act and establish and oversee efficient and effective operations in SSA. It also prescribes that the Executive Director will be SSA's chief operating officer responsible for administering the programs. It appears to us that there could be some duplication in their responsibilities for the administration of the programs. The role of the Executive Director to direct SSA's operations needs to be more clearly delineated.

We are also concerned about two other matters. First, the bill appears to provide authority for the board to establish SSA's organizational structure, an authority that might better be given to the Executive Director, who will have to direct operations using that structure. Second, the bill gives the board authority for developing long-range plans for the agency. While we agree that the board should develop policy for SSA, we

believe the Executive Director should do its operational planning. The current Commissioner has developed an operational plan for SSA through the year 2000, and we believe that it should be continued should there be a change in leadership.

Regarding the Beneficiary Ombudsman, the bill does not state to whom this official reports. The role of the Ombudsman in representing beneficiaries could be rendered ineffective unless this person reports at a very high level within the organization, such as to the board or to a single Administrator. We support the establishment of a Beneficiary Ombudsman to sponsor and support beneficiary interests, and we believe that the creation of an Ombudsman could (1) help ensure that beneficiaries' rights are continually recognized in SSA's long-range planning and operational changes and (2) contribute to improving the level of public confidence in the administration of the social security programs.

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Mr. Chairman, that concludes my testimony. We would be happy to answer any questions.

Chairman JACOBS. Thank you.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

From your review, Mr. Delfico, would you recommend that this be a strong administrator/weak board, or a strong board/weak administrator type program? It seems to me it has to be one way or the other. It would not be beneficial to have both of them at odds.

Mr. DELFICO. We believe that it should be a strong administrator and an advisory board, not necessarily full time, but someone to advise the administrator on policy matters.

Mr. SCHULZE. So broadening the board—what might meet that 9 or 11 member board, or something like that—with a Chairman, and the Chairman might work more closely with the Executive Director. Do you think that would accomplish it?

Mr. DELFICO. It would accomplish something if, in fact, the board stayed out of operations. Our concern is, and it has been our experience in looking at a number of regulatory agencies, that commissions or boards invariably have problems in operating the agency.

I will grant you that a board has some good points—that is, when it comes to operating in a quasi-judicial or legislative environment, they are good for that. When it comes to having policy matters discussed with people with different kinds of views, they are also good at that. When it comes to running larger organizations, they do not fare very well at all. It has been our experience, looking at a number of agencies—the last being the Consumer Products Safety Commission—that we would not like to see a board run an agency or an administration.

Mr. SCHULZE. What should the relationship between the Quadrennial Commission and a board be?

Mr. DELFICO. If we are going with a board, I agree that they should have an influence in the Quadrennial Commission, and I think as the legislation——

Mr. SCHULZE [continuing]. For the cross-fertilization, should some of the board be on the Quadrennial Commission?

Mr. DELFICO. I think so, yes. I think that would make sense.

Mr. SCHULZE. All right. How would you strengthen the Executive Director, other than a definitive term?

Mr. DELFICO. Given the current legislation, I would give the Executive Director more authority to organize the agency to meet the operational challenges that that Director sees.

I would give the Executive Director more authority to develop planning, though I recognize that planning and policy are very blurred. Part of planning is integrating policy.

I think those are two key functions that I would have the Executive Director more responsible for.

Mr. SCHULZE. Thank you. Are there any other recommendations you would make?

Mr. DELFICO. At this time, we have some suggestions on language changes, but we can talk to your staff and the committee staff about that.

Mr. SCHULZE. Thank you.

Chairman JACOBS. Mr. Moody.

Mr. MOODY. Thank you.

Thank you for your testimony.

You recommend in your testimony, on page 3, a strong single administrator appointed for an 8-year fixed term. Why 8? Why not 7, 6, 5, or 4?

Mr. DELFICO. We have debated that question ourselves.

Eight years appeared to be about as long as we felt an administrator needed to really get programs going. It takes quite a while to turn an agency or bureaucracy around and to establish programs. Admittedly, it is arbitrary. It is not based on a scientific analysis.

Mr. MOODY. The more able the appointee, the shorter the years required? [Laughter.]

Mr. DELFICO. Yes.

Mr. MOODY. If that person was reappointed, you certainly would not need, necessarily, another 8-year term, right?

Mr. DELFICO. No, not necessarily.

Mr. MOODY. So, there is a certain rigidity to the 8-year term?

Mr. DELFICO. There is, and it has some down sides. Particularly, it spans administrations, and if the administrator belongs to a different party, there may be some friction. We recognize that.

Mr. MOODY. You recommend that the SSA's current strategic plan 2000 remain in effect for the new independent agency if such is created. This plan includes provisions to explore creation of a Social Security Court, reduce the number of levels in the appeal process, and eliminate the retirement test. Do you regard these items that are in the bill as technical management issues or policy, and do you have any comment on them?

Mr. DELFICO. They are policy. I would say, particularly the last one, the removal of the retirement test, should be——

Mr. MOODY. It is clearly policy, but——

Mr. DELFICO. Yes.

Mr. MOODY [continuing]. The other two?

Mr. DELFICO. I would argue that they are part policy and part operational, but by in large, there is a heavy policy component in those parts of the plan.

Our recommendation to continue with the plan is based, in part, on our review of the plan and in part on frustration. Over 20 years, this agency has not had an official long-range plan, and this is the first one they have had, and we are concerned that the next administrator would come in and dump the plan.

We are very pleased to see that, at least, there has been an attempt to put a plan together. We are not totally agreeing with everything that is in that plan, but the concept of a long-range plan for an agency like SSA is critical, and it should be continued.

Mr. MOODY. If we had a strong administrator or weak, or just merely an advisory board, would that jeopardize that management goal that you have enunciated, or would that be neutral with respect——

Mr. DELFICO. If we——

Mr. MOODY [continuing]. Vis-a-vis the current——

Mr. DELFICO. If you had a strong Commissioner—the current Commissioner has been excellent, other Commissioners also—I think you would not have to worry about a long-range plan, because they would continue with it. It is a fundamental part of good management. It is something that people should develop that manage an agency this large, particularly——

Mr. MOODY. Well, could not you argue that an 8-year fixed term, which you recommend——

Mr. DELFICO. Yes.

Mr. MOODY. [continuing]. Reduces the need for a long-term plan, because the person says, "Well, heck, I am going to be here for 8 years. Why do I want to tie my hands early on? I may find out later that I want to give myself flexibility."

I mean, the plan is more necessary the less stability one foresees in the personnel in question, correct? So, if you have an 8-year fixed appointment, it moderates a need for a long-term plan.

That might be another strike against the 8-year fixed term. It takes off the pressure in policy terms. The whole country needs to see some stability of the planning and policy development process in SSA.

Do you want to comment?

Mr. DELFICO. The comment, Mr. Moody, is that we saw the 8-year term and the long-range plan going together. We feel it takes that long to implement the plan. There are certain features in the current plan that are going to take that long, and we do not want to give the impression that this plan is a fixed plan. It is a variable one. It has to reflect technology changes and demographic shifts.

We feel that the plan, as designed today, is broad enough to include that, and it would take about 8 years, in our view, for an administrator to really put it into place, implement it, and carry it out.

Mr. MOODY. So, you do not see a disharmony between the fixed term of 8 years and the need for a long-term——

Mr. DELFICO. That is correct.

Mr. MOODY. Back to the question of reducing the number of levels in the appeal process. That is more of a management than a policy issue, let us say. At least it seems to me to be so.

Let me comment on the current number of levels that we are now facing in the appeal process.

Mr. DELFICO. I am not prepared to mention anything right today, but we can get back to you on that, if you would like?

Mr. MOODY. If you have any comments later, I would appreciate it.

Finally, do you have any comments on the question of creating a separate Social Security or administrative law judge structure that would be independent of the agency?

Mr. DELFICO. No, I do not have any comments on that either.

Mr. MOODY. OK, thank you very much.

Chairman JACOBS. I appreciate your testimony, and I am sure the subcommittee generally does. I was particularly impressed by your comments about the authority to expand the executive positions. I think that is something that could very well stand some very careful tightening up. I am grateful to you for bringing that up.

It seems to me that if there is one cardinal rule that underlies the Anglo-Saxon system of government in protection of individual liberty, it is that policy decisions are made by more than one person, and that administrative functions are best carried out by one person.

In my home State, and in most States I guess, there was the county commissioner system. I went to the State legislature. I sponsored the bill that ended it in the major counties, and I remember saying that no three mortals can act in concert as one. The only supernatural effect would be the eternal triangle in which the buck forever orbits. Does that pretty well echo what you are saying here?

Mr. DELFICO. I think you could put it that way.

Chairman JACOBS. It seems to me that the important task, if this legislation is to become law—I should add, and I want to emphasize that if there is anything worse than a multimember board making administrative decisions, it is an individual making policy decisions. That is dangerous—a furor.

It seems to me our task is, as you suggest, to be as certain as we possibly can be, that the two functions are delineated and assigned to the proper places.

We thank you for your testimony.

Mr. DELFICO. Thank you, Mr. Chairman.

Chairman JACOBS. Our next witness is the Honorable—nay, the venerable—Claude Pepper.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN, SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE, SELECT COMMITTEE ON AGING

Mr. PEPPER. Mr. Chairman and members of the subcommittee, I want to commend all of you for undertaking the improvement and the perfection of one of the greatest institutions we have in this great republic of ours, Social Security.

You may remember that, when Social Security was conceived by President Roosevelt, he said, "I am looking for a sound means which I can recommend to provide at once security against several of the great disturbing factors in life, especially those which relate to unemployment and old age."

He didn't intend or conceive that Social Security would answer all problems; but it would be a nest egg. It would be a dependable source of reliance for the elderly and the disabled people of this country.

Now, just to show you how extensive it is and how meaningful it is to the people of this country; fully 95 percent of older Americans receive a monthly Social Security check. And 4.5 million disabled workers, their spouses and their children, receive disability insurance benefits each month.

Altogether, more than 36 million people in America receive a Social Security check every month; and my recollection is that it averages something over $500 a month. In addition to that, over 140 million Americans are insured in the event of death or disability.

Social Security also provides 95 of every 100 American children with inflation-proof survivor's benefits. There is one other figure I would like to use; if it were not for Social Security, for every elderly person below the poverty level today there would be 3.5 elderly people below that level.

Social Security is the primary source of income for 70-percent of our elderly, and it is virtually the sole source of income for almost one in three of our elderly people. Now, one of the things that you are very much concerned about—and so am I—is the independent status of Social Security.

I was a member of the Social Security Commission in 1982 and 1983, and we recommended Social Security be independent of the budget, be an independent agency. And I believe the present law is that it will become independent, in 1993, or 4 years from now.

I would like to see it become independent just as soon as we can enact the legislation to do so. I think it was the Johnson administration that brought Social Security under the budget system in order to improve the status of the budget, make it look better.

Well, we are not concerned about appearances. We are concerned about principle. And so, I commend this subcommittee for its study of this subject, and I hope you will conclude that we shall—in the immediate future—provide by appropriate legislation that Social Security will be an independent agency of the Government and will be properly run as an independent agency.

There is one other thing that I think is critically important that I hope your subcommittee will consider; and that is the protection of the staff of the Social Security Administration. During the last 8 years, there have been 15,000 people who have been cut from the staff of the Social Security Administration, impairing the ability of the administration to resolve the problems that arise in the administration of so large a program.

I know in my office in Miami, I get an increasing number of complaints from people having difficulty in getting information from Social Security relative to the status of their claims or the adjustment of some point that has been raised by the Social Security Administration. And those problems arise because of the inadequate size of their staff.

Now this administration, as I understand it, is recommending that over 1,200 more people be cut from the staff of Social Security in the next year. So what we need to do is to ensure they have the staff required for the efficient administration of the program. That is the criterion that should be met.

And remember this: These people, if they miss a Social Security check a month or two, it is not like you and me. We can get along if we don't get a check maybe one month. We could make up for it the next month. A lot of those people, remember, that is their food and shelter, that is their medical care.

So missing a month or not getting a Social Security check on time is very critical to those people, because they do not have the reserves that we have. And so it is extremely important that you emphasize that the staff shall at all times be adequate to meet the demands of that tremendously important agency.

Now, one other thing I would like for you to consider is this matter of building up reserves and what should be done with this money that is accumulated as the surplus in the fund. To show you some idea of the magnitude of the Social Security fund, in 1983, we thought we made it and we advertised that we had made it sovereign and sound for the next 75 years; because we provided the revenue way on out there for the Baby Boom payments and all the

other demands for the expected needs of the system in the next 75 years.

This year, the surplus will reach approximately $30 billion; and by the year 2000, the total accumulated surplus is projected to be $1.3 trillion. Now, that is not too long away by the year 2000, $1.3 trillion.

By 2030, the surplus is expected to balloon to $12.4 trillion. Now, this great surplus gives testimony to the success of the program. Now, what do we do with that surplus? At one time, the Government would issue these long-term bonds; and they bore generally a low rate of interest. By our recommendations in 1983, we provided that the Government could borrow these Social Security funds, but they had to pay the same rate of interest for that money they pay the bankers or the public, which lets the Government have money for its purposes.

And so today, the Government, as far as I am aware, is the sole borrower from the Social Security fund. But now, that is what concerns me; when we get out there to the year 2030 or far into the next century, the surplus is going to be so huge—in the many, many trillions of dollars—so when we start paying off these baby boomers, as it were, when they become eligible for Social Security, where is the Government going to get the money?

Now, it may be that they can sell the bonds; because they issue—as I understand it—to the Social Security Administration, a special kind of bond bearing the current rate of interest. And it may be that the Government could sell bonds when it is called upon to pay huge amounts, maybe trillions of dollars, out to the beneficiaries. But is the Government going to have to increase taxes in order to provide the money to pay back the debt that they owe?

If so, are we going to run into the same sort of problem we have got now? People don't want more taxes. Maybe the administration is reluctant to commit itself to increase taxes. But I think very great care should be given to the matter of determining the best way to handle this enormous surplus of funds that is accumulating.

I would not recommend that it be invested in private enterprise, because as we have seen from the savings and loans, investments in the private system can fail. And we want to ensure that the people get the money which they are entitled to receive. But I just think that the Congress ought to start giving serious thought to this matter—is this the only way, is this the best way—or when this money is needed, are we assured it will be available. Of course, I don't know any better borrower than the Government of the United States.

If our Government is not sound, I guess nothing else must be sound in the country; other financial institutions are not. But at least competent committees like yours should begin to consider, when this surplus becomes so huge, what is the best way to handle it? What is the most competent way to administer it?

Now, just one other thing, Mr. Chairman and members, that I would like to mention; that is the taxation of Social Security benefits. As a member of the Commission in 1983, I opposed the tax that was levied by the legislation passed at that time. Anybody that was earning over $25,000 a year as an individual, or maybe

$35,000 a year as a couple, should have to pay tax on 50-percent of his or her or their income.

Now, I don't think that any Social Security benefits should be subject to taxation. Social Security is in a special category. It is a special kind of a fund set aside for the enjoyment and the protection of elderly and disabled people. And that money has already been taxed once; it seems to me, when you pay your taxes, you pay it out of money that has already been taxed by the Government. Why should you have to pay tax on it when you get it back, or you get a part of it back? And so I hope to see the day when we repeal the tax we imposed in 1983. And now there are some that want to tax all of Social Security benefits.

I certainly hope that Congress will not approve that kind of proposal. As I said, I think President Reagan was right in 1980 when he said he was going to propose that we eliminate this limitation on income. I think when you get to be 65 years old, you are entitled to your Social Security benefit; and you work as much as you want to, earn as much as you can and want to.

And unhappily, President Reagan never got around to implementing his recommendation; but he did recommend that. And I hope we have not forgotten. I am going to introduce a group of bills shortly; and that will be one of them—to repeal the tax that we imposed in 1983—and protect the Social Security benefits against taxation in the future.

So what are you dealing with? You are dealing with, you might say, the life blood of a great many of our American citizens. As I said, at least half of the people today who get Social Security checks rely upon that Social Security check for at least half of their total income. And so, these things about this being an independent agency, the resources being properly protected in the future, it not being subject to taxation, there being no limits upon the earnings of a recipient of Social Security, I am advocating what I believe to be a sound principle; I call it the reanimation of the elderly.

I was out in San Francisco last year; and my hostess arranged for me to play golf at a country club nearby. And I sat down with the three fellas that were going to play with me. And I said, "Well, I guess—are all you fellas retired?"

And one of them said, "Well, yes and no." He said, "I did retire, along with a lot of my colleagues in my company; but we got sort of tired of playing golf so much, and we have formed a new business."

Look at that army of retired people out there. A little bit ago, they were running America. They were knowledgeable; they were experienced; they were competent; they were reliable. And here they are, sitting beside the road, as it were, while America passes them by.

They ought to be in the mainstream, doing whatever they want to. I am 88 years old, as you know; if I had quit work at 65, I don't believe I would be here today. I think if you have something to get up for in the morning, something to do, something to challenge you, it is a good health assurer as well as a pleasant experience.

So you are dealing with very critical things here that pertain in a most sensitive way to many, many millions of our fellow citizens.

And I wanted to commend you, Mr. Chairman—you and your subcommittee—upon this study that you are making.

Thank you very much. May I offer my statement for the record, please?

Chairman JACOBS. Yes, of course. Without objection.

[The statement of Mr. Pepper follows:]

NEWS

Select Committee on Aging

U.S. House of Representatives

CLAUDE PEPPER, Chairman
Subcommittee on Health and Long-Term Care
300 New Jersey Ave., S.E., Room 715
Washington, D.C. 20515
202/226-3381

FOR IMMEDIATE RELEASE
MARCH 1, 1989
10:00 A.M.

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TESTIMONY OF
THE HONORABLE CLAUDE PEPPER, CHAIRMAN
SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE
HOUSE SELECT COMMITTEE ON AGING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
HOUSE COMMITTEE ON WAYS AND MEANS
ON
"THE INDEPENDENCE OF SOCIAL SECURITY"

"...I AM LOOKING FOR A SOUND MEANS WHICH I CAN RECOMMEND TO PROVIDE AT ONCE SECURITY AGAINST SEVERAL OF THE GREAT DISTURBING FACTORS IN LIFE -- ESPECIALLY THOSE WHICH RELATE TO UNEMPLOYMENT AND OLD AGE..."

MR. CHAIRMAN. MEMBERS OF THE SUBCOMMITTEE. WITH THOSE WORDS, PRESIDENT FRANKLIN DELANO ROOSEVELT BEGAN THE GREATEST AND MOST SUCCESSFUL PUBLIC PROGRAM IN OUR NATION'S HISTORY, SOCIAL SECURITY. I COMMEND YOU ALL, ESPECIALLY YOU, CHAIRMAN JACOBS, FOR CALLING THIS HEARING ON HOW TO MAKE SOCIAL SECURITY EVEN SOUNDER AND STRONGER THAN IT NOW IS.

NO SINGLE FUNCTION OF GOVERNMENT AFFECTS AS MANY AMERICANS AS PROFOUNDLY AS SOCIAL SECURITY DOES. FULLY 95 PERCENT OF OLDER AMERICANS RECEIVE A MONTHLY RETIREMENT CHECK, AND 4.5 MILLION DISABLED WORKERS, THEIR SPOUSES AND THEIR CHILDREN RECEIVE DISABILITY INSURANCE BENEFITS EACH MONTH. ALTOGETHER, MORE THAN 36 MILLION AMERICANS RECEIVE A SOCIAL SECURITY BENEFITS CHECK EVERY MONTH, AND OVER 140 MILLION AMERICANS ARE INSURED IN THE EVENT OF DEATH OR DISABILITY. SOCIAL SECURITY ALSO PROVIDES 95 OF 100 AMERICAN CHILDREN INFLATION-PROOF SURVIVORS PROTECTION.

SINCE ITS INCEPTION IN 1935, SOCIAL SECURITY HAS TRANSFORMED THE ECONOMIC WELL-BEING OF VIRTUALLY EVERY MAN, WOMAN AND CHILD IN AMERICA. THE DRAMATIC REDUCTION IN SEVERE POVERTY AMONG THE AGED, FOR EXAMPLE, CAN BE ATTRIBUTED ALMOST COMPLETELY TO SOCIAL SECURITY. IF THERE WAS NO SOCIAL SECURITY, THERE WOULD BE 3.5 ELDERLY LIVING BELOW THE POVERTY LEVEL FOR EVERY ONE TODAY. SOCIAL SECURITY IS THE PRIMARY SOURCE OF INCOME FOR 70 PERCENT OF OUR ELDERLY, AND IT IS VIRTUALLY THE SOLE SOURCE OF INCOME FOR ALMOST ONE IN THREE OLDER PERSONS.

I AM MOST PLEASED THAT THERE APPEARS TO BE, WITH YOUR GOOD LEADERSHIP, A CONSENSUS DEVELOPING IN CONGRESS TO MAKE SOCIAL SECURITY AN INDEPENDENT AGENCY. IT WAS A MODEL INDEPENDENT PROGRAM FOR YEARS AND IT SHOULDN'T HAVE EVER BEEN CHANGED. AS A MEMBER OF THE SOCIAL SECURITY COMMISSION, IN 1983, I AND OTHER COMMISSION MEMBERS RECOMMENDED SOCIAL SECURITY BE MADE AN INDEPENDENT AGENCY ONCE AGAIN. I HAVE ALSO, LIKE YOU AND MANY OTHER OF OUR DISTINGUISHED COLLEAGUES, INTRODUCED LEGISLATION TO ACCOMPLISH THIS OBJECTIVE IN EVERY CONGRESS SINCE 1983. I PLEDGE TO DO WHATEVER I CAN TO HELP GAIN THE PROMPT ENACTMENT OF THIS IMPORTANT LEGISLATION.

IN ADDITION TO INDEPENDENT STATUS, WE MUST ALSO GIVE THE SOCIAL SECURITY ADMINISTRATION SUFFICIENT STAFF TO OPERATE THE PROGRAM EFFECTIVELY. FOR THE PAST 8 YEARS THERE HAS BEEN A CONTINUOUS ATTACK ON SOCIAL SECURITY STAFF. STAFF HAS BEEN CUT BY NEARLY 15,000 OR 20 PERCENT AND THE PRESIDENT'S NEW BUDGET CALLS FOR AN ADDITIONAL CUT OF 21,000 STAFF OVER THE NEXT SEVERAL YEARS. THESE DRAMATIC CUTS MAKE IT MORE DIFFICULT FOR MANY TO GET BENEFITS (ESPECIALLY DISABILITY BENEFITS) TO WHICH THEY ARE RIGHTFULLY ENTITLED AND SERVE TO UNDERMINE PUBLIC CONFIDENCE IN THE PROGRAM. AS A FIRST STEP WE SHOULD AT LEAST STOP ANY MORE CUTS TO SOCIAL SECURITY STAFF. EVENTUALLY, WE SHOULD FULLY RESTORE ALL CUTS.

I WOULD ALSO LIKE TO TAKE THIS OPPORTUNITY TO EXPRESS TO YOU MY CONCERN OVER AN UNFORSEEN COMPLICATION WITH THE BUILD UP RESERVES WE PLANNED TO ENSURE SOCIAL SECURITY'S SOLVENCY OVER THE NEXT 75 YEARS. THIS YEAR THE SURPLUS WILL REACH APPROXIMATELY $30 BILLION AND BY THE YEAR 2000 THE TOTAL ACCUMULATED SURPLUS IS PROJECTED AT $1.3 TRILLION. BY 2030, THE SURPLUS IS EXPECTED TO BALLOON TO $12.4 TRILLION! THIS GREAT SURPLUS GIVES TESTAMENT TO THE SUCCESS AND STRENGTH OF SOCIAL SECURITY, BUT IS ALSO THE SOURCE OF SOME UNEASINESS FOR ME. AS YOU KNOW, THESE SURPLUSES, THAT IS THE AMOUNT COLLECTED IN TAXES OVER AND ABOVE THAT NEEDED TO PAY BENEFITS IN A YEAR, ARE INVESTED IN SPECIAL U.S. GOVERNMENT BONDS. THESE SOCIAL SECURITY FUNDS ARE IN TURN BEING USED TO PAY FOR OTHER FEDERAL PROGRAMS AND ARE MASKING THE TRUE SIZE OF THE FEDERAL DEFICIT. BY 2030, HOWEVER, WHEN THE BABY BOOM GENERATION BEGINS TO RETIRE, THE U.S. TREASURY WILL HAVE TO MAKE MASSIVE INTEREST

PAYMENTS INTO THE TRUST FUNDS IN ORDER TO PAY BENEFITS. THE QUESTION IS WHERE WILL THE TREASURY BE ABLE TO GET THAT MONEY? NOW I DON'T KNOW OF ANY MORE SECURE OR RELIABLE ENTITY TO LEND MONEY TO THAN THE U.S. GOVERNMENT. HOWEVER, THE USE OF THESE SURPLUSES TO HIDE THE TRUE DEFICIT AND THE POTENTIAL POLITICAL TEMPTATION FOR SOME TO USE THE SURPLUSES DIRECTLY FOR DEFICIT REDUCTION ARE TROUBLING. WE SHOULD BE TAKING STEPS NOW TO PROTECT SOCIAL SECURITY FROM THESE TROUBLING USES.

FINALLY, I WOULD ALSO LIKE TO TAKE THIS OPPORTUNITY TO WARN AGAINST ANY ATTEMPTS TO TAMPER WITH THE SOCIAL SECURITY CONTRACT. ANY EFFORT TO FURTHER TAX SOCIAL SECURITY BENEFITS OR TO MAKE ANY OTHER REDUCTION IN BENEFITS WILL BE FORCEFULLY OPPOSED.

IN SUMMARY, I PROMISE MY FULL SUPPORT FOR PROMPT PASSAGE OF LEGISLATION TO MAKE SOCIAL SECURITY AN INDEPENDENT AGENCY. I ASK THAT THE SUBCOMMITTEE BEGIN TO TAKE STEPS TO ADDRESS THE POTENTIAL IMPACT OF THE ACCUMULATION OF IOUs IN THE TRUST FUNDS. I ALSO PLEDGE OPPOSITION TO ANY ATTEMPTS TO TAMPER WITH SOCIAL SECURITY BENEFITS.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU.

Chairman JACOBS. Mr. Schulze might have a question.

Mr. SCHULZE. Thank you, Mr. Chairman, and thank you, Chairman Pepper. It is always a pleasure to have you testify.

Claude, I only have one question; and that is over the use of the terminology, "surplus." I have been using, "reserves." It seems to me this is not a surplus. A surplus is something that you don't need or which is an overage which you can utilize for some other purpose. But I think the term ought to be "reserve," because it is reserved and it is committed; and those people or individuals out there who are expecting to get that, they view it as a reserve.

And I think that is one step we can take; start referring to it as reserves in Social Security instead of surplus. So I don't think you would disagree with that.

Mr. PEPPER. Oh, no. No, of course not.

Mr. SCHULZE. We should start using that term.

Mr. PEPPER. That is not a proper word. You are right. It seems to be a reserve.

Mr. SCHULZE. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Moody.

Mr. MOODY. Thank you, Chairman Pepper. It is delightful to have you with us. We were very, very interested in what you said on so many issues—you covered so much ground this morning. But what is your position, then, on an independent agency, sir?

Do you think SSA should be an independent agency with a three-person board, with an Executive Director; or do you think it should continue to be run by a single person appointed as a Commissioner by the President? You do favor the bill in that?

Mr. PEPPER. I have no firm opinion, I will say to my distinguished colleague, on that matter. All we need is a kind of administration that will make if efficient and responsible and reliable. But it should have a single administrator or board. I would perhaps prefer a board with a single executive administrator to run it. The main thing is, it is a huge operation, of course. And it is a huge bookkeeping job and all that.

All we need to do is have efficiency. To accomplish efficiency, the managers should not be involved in political questions—how much the budget is and the like. Take it out of the budget. It stands by itself as a huge entity.

Mr. MOODY. Were you concerned by the turnover? In the last 15 years, we have had 10 different Commissioners. Are you concerned about that?

Mr. PEPPER. Yes, I am. I don't think that makes for the greatest stability and the greatest efficiency. We have in some ways played politics with Social Security. President Johnson we all admire and honor; but it was a political reason that caused him to bring Social Security under the budget. He wanted to make the budget look better.

Well, we are not concerned about how the budget looks, we are concerned about how good Social Security is and how sound the program is, and how well it is administered. And so, any time you bring political considerations into Social Security, I think is contrary to the best interest of that entity.

Mr. MOODY. Finally, Senator, do you think that Medicare and Social Security should both be run in tandem, by whatever struc-

ture we devise, or if we allow the present structure to continue; or should Medicare be run by HHS?

Are the issues affecting Medicare and Social Security so interlocked that they should be run under one policy or should they continue to be run somewhat separately?

Mr. PEPPER. I will say to my distinguished friend that I would prefer that they not be joined. I would like Social Security to remain an independent entity, to be operated as an independent entity. Now, this matter of health care is very, very close to my heart, as it is to your heart.

We, as you know now, in the last catastrophic bill, under the Pepper amendment, we set up a bipartisan commission of 15 people—3 appointed by the President, 6 by the Senate and 6 by the House. We have now organized that Commission. If I may say so, I have been named as Chairman of it; and we are beginning to get underway.

We ought to recommend a system of comprehensive, long-term care; and also, we ought to recommend a comprehensive system of medical care for all the people of America. The United States and South Africa are the only two industrial nations in the world that don't have a comprehensive health care system for their people. So I am thinking that Medicare itself may need to be modified.

I think it is well to have a Cabinet officer, perhaps, at the head of that structure. But when we get through with our study, we may have some recommendations with respect to Medicare. I would prefer that the health program of the country be dealt with as a separate entity, and the Social Security benefits program be kept as an independent agency.

Mr. MOODY. Thank you.

Mr. PEPPER. Yes.

Chairman JACOBS. Mr. Chairman, you do us honor by sharing your thoughts with us; and we thank you.

Mr. PEPPER. Thank you, Mr. Chairman. I appreciate being with you.

Chairman JACOBS. Our next witness is the Honorable Arthur Flemming, former Secretary of HEW, former member of the National Security Council; and Dr. Flemming is representing the Save Our Security Coalition.

STATEMENT OF HON. ARTHUR S. FLEMMING, COCHAIR, SAVE OUR SECURITY COALITION, FORMER SECRETARY OF THE U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. FLEMMING. Thank you, Mr. Chairman.

I appreciate the opportunity of appearing before you in connection with this very important issue.

As you indicate, I serve as cochair of S.O.S., the National Coalition for Social Security, which was started as a result of the leadership of the late Wilbur Cohen.

S.O.S. is a bipartisan coalition of 120 national, State, and local organizations. The membership of the coalition's organization includes workers, retirees, women, minorities, and persons participating actively in programs dedicated to the objective of social justice.

S.O.S. supports the objective of H.R. 791, namely, to establish the Social Security Administration as an independent agency which shall be headed by a Social Security Board, and which shall be responsible for the administration of the old-aged, survivors, and disability insurance program under title II of the Social Security Act and the supplemental security income program under title XVI.

In testifying before this subcommittee on July 13, 1984, the late Wilbur Cohen stated that the concept now incorporated in this bill had my support and the support of the following additional persons who had had administrative experience in this area: Charles Schottland, who served as Commissioner of Social Security in the Eisenhower administration; Robert Ball, who served as Commissioner of Social Security in the Kennedy, Johnson, and Nixon administrations; the late Nelson Cruikshank, who was Special Assistant on Aging to President Carter; and William Bechill, Commissioner on Aging in the Johnson administration.

Secretary Cohen, drawing on nearly 30 years of close work and association, first with the independent bipartisan Social Security Board and then later with Commissioners of Social Security said "From my experience, I strongly favor removing SSA from HHS, and restoring it to the independent status of a board as it was from 1935 to 1946. It worked well then, and I believe it would work even better now."

Linking his own experience with the experience of other administrators who had authorized him to speak in their behalf, Secretary Cohen expressed the conviction that experience of administrators are a valid and realistic indicator of a need for organizational change.

Five years after the 1984 hearing to which I have referred, S.O.S. believes that the need to transfer responsibility for administering the Social Security system to an independent bipartisan board is even greater than it was in 1984.

Many beneficiaries and many families of beneficiaries have lost confidence in the fairness of the Social Security program. One of the principle reasons for this loss of confidence has been the administration of the disability program in the 1980's. This loss of confidence began when the interpretations of the 1980 amendments lost sight of the considerations of compassion which motivated Congress into expanding Social Security in the 1950's to include the disability programs.

These interpretations were followed by arbitrary and capricious administrative actions which caught hundreds of thousands of beneficiaries from disability roles. Actions which resulted in suffering and, in some instances, suicide.

These administrative actions were followed by introducing the doctrine of nonacquiescence in the decision of Federal appeals courts that favored disability beneficiaries. A doctrine which undermined the confidence and the ability of the Federal judiciary to provide relief to the victims of arbitrary and capricious administrative actions.

It was this epidemic of arbitrary and capricious actions in the administration of the disability program that led Wilbur Cohen to include this conclusion in his 1984 testimony: "I sincerely believe that if there had been a board administering the disability provi-

sions of the Social Security program in 1981 we would not have had the unfortunate recent experience with the administration of the Social Security program. With a bipartisan board, there very likely would have been a whistle-blower on the board who would have prevented or moderated the precipitous and uncompassionate implementation of the 1980 amendments."

I concur wholeheartedly in Wilbur Cohen's conclusion. I also believe that the Congressional Panel on Social Security Organizations, Chaired by Elmer Staats, did not give sufficient weight to what needs to be done to restore confidence in the fairness of the Social Security system in the light of our experience with the disability program when they decided to oppose the establishment of the Social Security Board based upon the following conclusions.

They said in their report a form of organization designed for deliberation, representation and adjustment of different viewpoints, as a multimember board would be, is appropriate to head an agency which has received an extraordinary delegation of a broad adjudicatory and rulemaking power. The leading examples are the TVA and the various independent regulatory commissions which have broad powers to make and interpret rules.

Congress has made no comparably broad delegation to the Social Security Administration. This conclusion, relative to the Social Security Administration underestimates the complexity of our Social Security system, the extent to which authority to act has been delegated to the Social Security Administration by the Congress, and the impact with which the exercise of that authority has on the lives of millions of persons.

A careful analysis of our experiences with the disability program in the 1980's would make it very difficult to accept the conclusion of the Staats committee. A widespread perception that arbitrary and capricious actions were being taken against beneficiaries to further a political objective, namely, to save money by curtailing benefits to which beneficiaries were entitled, led to bipartisan corrective action by the Congress in the form of the Disability Reform Act.

The administration of the Social Security program by a bipartisan board would have made in all probability a congressional intervention unnecessary at that particular point.

The conclusions of the Staats committee also overlooked the major role that the appeals process plays in the operation of the Social Security system. As the members of this subcommittee know, there has been a widespread perception that efforts had been made to manipulate this appeals process in the interest of achieving a political objective, namely, saving money by undermining the rights of beneficiaries.

Here again I believe that the administration of the Social Security program by a bipartisan board would constitute a major contribution in dealing with the erosion of confidence in the fairness of the appeals process.

The Staats panel Social Security organization included the following conclusion in its report: "There is considerable evidence that the Social Security Administration, once considered one of the best managed and most efficient agencies in the Federal establishment, no longer provides the quality of public service that the

American people have come to expect and believe they have paid for with their contributions to the system."

Mr. Chairman, the executive committee of S.O.S., Save of Security, has discussed this particular aspect of the matter time and again, and we have been given evidence by our member organizations that the condition that the Staats committee described continues to exist. For example, the American Federation of Government Employees, which is an active member of S.O.S., of course keeps in close touch with this aspect of the matter, and they have provided us with evidence time and again pointing to the same conclusion that the Staats committee arrived at.

It is well-recognized that the bipartisan independent Social Security Board, which administered the system from 1935 to 1946, established and implemented the standards which led to the high quality of public service referred by the Staats panel.

The reestablishment of an independent Social Security Board could lead to an introduction of the concepts of management and public service that characterize the work of the first board. There would be a renewal of a sense of mission on the part of staff, a mission to serve in the most effective way the millions of beneficiaries who are a part of the Social Security system. There would be a renewal of confidence in the Social Security system on the part of persons in both the executive and legislative branches who pass on requests for resources to operate the system.

Once again the Social Security system would find it impossible to compete successfully for persons who desire to devote their careers to rendering of meaningful service to others.

I believe that the legislation should make clear that the Congress intends to hold the members of the board and the members of the board alone responsible for the operation of the system. For that reason, Mr. Chairman, I do not favor a specific term of office for the Executive Director. I believe that the board should not only have authority to appoint the Executive Director, but also should have the authority to terminate the services of that officer whenever they feel such action should be taken.

I also believe that the board should be given the responsibility of monitoring the social insurance aspect of Medicare, and that whenever it believes that there is a deviation from basic social insurance concepts it should make appropriate recommendations to the President and the Congress.

I concur in the judgment of the authors of the bill in not transferring Medicare to the Social Security system. I believe that Medicare is such an integral part of our health system that it should be left with the Department of Health and Human Services.

Likewise I believe that the Congress, either in legislation or in committee reports, should express its belief that the Chairman of the Board should be invited by the President to participate in Cabinet meetings whenever the Social Security system is an agenda item.

In summary I return to my opening comment, namely, that I believe H.R. 791 should be enacted into law in order to restore confidence in the fairness of the Social Security system. Unless such action is taken, we are seriously jeopardizing the effective functioning of our nation's greatest single accomplishment on the domestic front over the period of the last 50 years.

Thank you, Mr. Chairman.

[The statement of Mr. Flemming follows:]

OUTLINE OF TESTIMONY
BY
ARTHUR S. FLEMMING

I. Introduction

A. I serve as Co-Chair of SOS, the national coalition for Social Security which was started as a result of the leadership of the late Wilbur Cohen.

1. SOS is a bi-partisan coalition of 120 national, state and local organizations.

2. The membership of the coalition's organizations includes workers, retirees, women, minorities and persons participating actively in programs dedicated to the objective of social justice.

B. S.O.S. supports the objective of H.R. 791, namely, to establish the Social Security Administration as an independent agency, which shall be headed by a Social Security Board, and which shall be responsible for the administration of the old age, survivors and disability insurance program under Title II of the Social Security Act and the supplemental security income program under Title XVI.

C. In testifying before this Subcommittee on July 30, 1984 the late Wilbur Cohen stated that the concept now incorporated in this bill had my support and the support of the following additional persons who had had administrative experience in this area:

Charles Schottland
Commissioner of Social Security in the Eisenhower Administration;

Robert Ball
Commissioner of Social Security in the Kennedy, Johnson and Nixon Administrations;

the late Nelson Cruikshank, Special Assistant to the President on Aging in the Carter Administration; and

William Bechill, Commissioner on Aging in the Johnson Administration.

1. Secretary Cohen, drawing on nearly thirty years of close working association with the independent, bi-partisan Social Security Board and Commissioners of Social Security said:

"From my experience, I strongly favor removing SSA from HHS and restoring it to the independent status of a Board as it was from 1935 to 1946. It worked well then and I believe would work even better now."

2. Linking his own experiences with the experiences of other administrators who had authorized him to speak in their behalf Secretary Cohen expressed the conviction that experiences of administrators are a "valid and realistic indicator of the need for organizational change."

D. Five years after the 1984 hearing to which I have referred S.O.S. believes that the need to transfer responsibility for administering the Social Security System to an independent, bi-partisan board is even greater than it was in 1984.

II. Body

A. Many beneficiaries--and many families of beneficiaries--have lost confidence in the fairness of the Social Security program.

1. One of the principal reasons for this loss of confidence has been the administration of the disability programs in the 1980s.

a. This loss of confidence began when the interpretations of the 1980 amendments lost sight of the considerations of compassion which motivated Congress in expanding Social Security in the 1950s to include the disability program.

b. These interpretations were followed by arbitrary and capricious administrative actions which cut hundreds of thousands of beneficiaries from disability rolls--actions which resulted in suffering and, in some instances, suicides.

c. These administrative actions were followed by introducing the doctrine of non-acquiescense in the decisions of federal appeals courts that favored disability beneficiaries--a doctrine which undermined confidence in the ability of the federal judiciary to provide relief to the victims of arbitrary and capricious administrative actions.

2. It was this epidemic of arbitrary and capricious actions in the administration of the disability program that led Wilbur Cohen to include this conclusion in his 1984 testimony:

"I sincerely believe that if there had been a Board administering the disability provisions of the Social Security program in 1981, we would not have had the unfortunate recent experience with the administration of the Social Security program. With a bi-partisan Board, there very likely would have been a 'whistle blower' on the Board who would have prevented or moderated the precipitant and uncompassionate implementation of the 1980 amendments."

3. I concur in Wilbur Cohen's conclusion.

4. I also believe that the Congressional Panel on Social Security Organizations, Chaired by Elmer Staats, did not give sufficient weight to what needs to be done to restore confidence in the fairness of the Social Security system in the light of our experience with the disability program when they decided to oppose the establishment of a Social Security Board based on the following conclusion:

"A form of organization designed for deliberation, representation and adjustment of different viewpoints, as a multi-member board would be, is appropriate to head an agency which has received an extraordinary delegation of broad adjudicatory and rulemaking power. The leading examples are the Tennessee Valley Authority xxx and the various independent regulatory commissions, which have broad powers to make and interpret rules xxx Congress has made no comparably broad delegation to SSA xxx"

a. This conclusion under-estimates the complexity of our Social Security System, the extent to which authority to act has been delegated to the Social Security Administration, and the impact which the exercise of that authority has on the lives of millions of persons.

(1) A careful analysis of our experience with the disability program in the 80s would make it very difficult to accept the conclusion of the Staats committee.

(2) A widespread perception that arbitrary and capricious actions were being taken against beneficiaries to further a political objective, namely, to save money by curtailing benefits to which beneficiaries were entitled, led to bi-partisan corrective action by the Congress in the form of The Disability Reform Act.

(3) The administration of the Social Security program by a bi-partisan board would have made, in all probability, Congressional intervention unnecessary.

b. The conclusions of the Staats Committee also overlooks the major role that the appeals process plays in the operation of the Social Security System.

(1) As the members of this subcommittee know there has been a widespread perception that efforts have been made to manipulate this appeals process in the interest of achieving a political objective, namely, saving money by undermining the rights of beneficiaries.

(2) Here again I believe that the administration of the Social Security program by a bi-partisan board would constitute a major contribution to dealing with the erosion of confidence in the fairness of the appeals process.

B. The Staats panel on Social Security Organization included the following conclusion in its report:

"There is considerable evidence that the Social Security Administration once considered one of the best-managed and most efficient agencies in the Federal establishment, no longer provides the quality of public service that the American people have come to expect and believe they have paid for with their contributions to the system."

1. It is well recognized that the bi-partisan, independent Social Security Board which administered the system from 1935 to 1946 established and implemented the standards which led to the "high quality of public service" referred to by the Staats panel.

2. The re-establishment of a bi-partisan, independent Social Security Board could lead to a re-introduction of the concepts of management and public service that characterized the work of the first Board.

a. There would be a renewal of a sense of mission on the part of staff--a mission to serve in the most effective way the millions of beneficiaries who are a part of the Social Security System.

b. There would be a renewal of confidence in the Social Security System on the part of persons in both the executive and legislative branches who pass on requests for resources to operate the System.

c. Once again the Social Security System would find it possible to compete successfully for persons who desire to devote their careers to rendering a meaningful service to others.

C. I believe that the legislation should make clear that the Congress intends to hold the members of the Board--and the members of the Board alone--responsible for the operation of the System.

1. For that reason I do not favor a specific term of office for the Executive Director.

2. I believe that the Board should not only have authority to appoint the Executive Director but also should have the authority to terminate the services of that officer whenever they feel such action should be taken.

D. I also believe that the Board should be given the responsibility of monitoring the social insurance aspect of Medicare and that, whenever it believes there is a deviation from basic social insurance concepts, it should make appropriate recommendations to the President and the Congress.

E. Likewise, I believe that the Congress either in legislation or committee reports should express its belief that the Chairman of the Board should be invited by the President to participate in Cabinet meetings whenever the Social Security System is an agenda item.

III. Conclusion

A. In summary, I return to my opening comment, namely, that I believe H.R. 791 should be enacted into law in order to restore confidence in the fairness of the Social Security System.

B. Unless such action is taken we are seriously jeopardizing the effective functioning of our nation's greatest single accomplishment on the domestic front.

Mr. MOODY [presiding]. Thank you very much, Mr. Flemming.

I take it from your testimony that a very strong reason for your recommendation today is what you perceive and what many do perceive to be the abuse of the disability system in the early years of the Reagan administration.

Mr. FLEMMING. That is correct.

Mr. MOODY. Suppose we could find a more direct and targeted means of handling that problem, let us say with the creation of—and this is just an example, I am not suggesting your answer should be bound by this example—the creation of an independent administrative law judge agency where those administrative law judges could continue their efforts to faithfully carry out the mandate they have rather than being pressured by the administration that—as we saw—had a political agenda in mind, a budgetary agenda at that time.

Is the remedy of an independent agency the most efficient way of getting at the main abuse you have cited today?

Mr. FLEMMING. I believe it is, and if you separated the disability part of the program and tried to set up a special procedure for that I do not think it would really deal with the fundamental issue, namely the loss of confidence in the way in which the Social Security system is administered from the standpoint of its fairness.

It is true that the disability developments in the 1980's provide us with the most dramatic illustration. However. there are other illustrations of the abuse of the appeals process as it affects other aspects of the Social Security program.

There is a climate that permeates the administration of the Social Security system at the present time which I feel can be corrected by the introduction of an independent bipartisan board.

I have listened to the comments of the difficulty of a board accepting responsibility for the operation of a system such as the Social Security system. It does create some problem, but they are not insurmountable provided that the Congress is clear in placing the responsibility on that board. For 9 years I served on a three-member board that operated the Civil Service Commission from 1939 to 1949. I know that you can operate under those circumstances.

I feel that this Social Security system is very, very unique. As I indicated in my testimony I respect very, very much Elmer Staats and his colleagues who served on that panel. But I think they just missed something there in terms of saying Social Security system is different from the TVA or is different from the regulatory agencies in terms of the public's dealing with the Social Security Administration, in terms of what the Social Security system means to them.

It is not that different. Some of the same principles should be kept in mind in deciding how the system is going to operate.

Now I watched this system operate under a three-member board from 1935 to 1946, and I know that that board had respect of all who dealt with it and all who came into contact with it. I notice that the only real criticism that the Staats panel made of that experience was that they had some difficulty possibly in deciding what was policy and what was administration. So I am not sure

those kind of issues are bound to arise because that is a pretty fine line at times of what is policy and what is administration.

That is why I urge this committee to make it clear that the board has the ultimate responsibility, and let them appoint an Executive Director and let them work out with the Executive Director these lines of demarcation. They will vary from time to time depending on the Executive Director, and depending on the members of the board, and so on. But the important thing is to make it clear that the board is responsible, and that Congress is going to hold the board responsible, and if they are going to have an Executive Director who is not doing the right kind of job, the Congress will hold them responsible for the fact that they have got an Executive Director who is not doing the right kind of job.

But the fact that that board from 1935 to 1946 was a bipartisan board did a great deal to get this system to the right start. People had confidence in the fact that it was being operated as a bipartisan system. I see no reason at all why in the light of the experience we had with the disability program we should not take note of the experience that we had from 1935 to 1946 and return to a bipartisan board.

Let us reestablish that bipartisan climate, atmosphere again.

Mr. MOODY. Let me ask you to react to a comment I will make trying to crystallize what I have been hearing.

If one's concern is predominantly the administrative efficiency of Social Security, then we have a force. The testimony of the GAO says that a three-member troika is not a very good way of managing anything large and complex like the Social Security Administration. If we add in your wrinkle that the Executive Director would be hirable and firable upon the pleasure of the three-person board, that does inevitably devolve into three people trying to manage the agency because that person does not have a fixed term, vis-a-vis those three bosses.

So that becomes almost inevitably, it seems to me, and I think GAO is pointing to this—a three-person management directorate. So if your main concern is with management, modernizing the system, bringing the computers up, managing this enormous empire of people, money and paperwork, then I can see a person might say that this board idea is not a very good one for management reasons.

But if your concern is confidence, if your concern is policy consensus, if your concern is preventing the kind of abuses—that I think we more or less agree with—that took place in the early eighties, then one easily can shift to the idea of a three-person board along the lines you suggest.

So it depends on which issue you think is more urgent. Some people think the SSA is a 1920's or 1930's administration that desperately needs to be brought into the 21st century through management reform, through computerization, and so forth, which lags far behind.

Some people, such as yourself, apparently, feel that the system has been badly shaken by a loss of confidence in the policy direction. So I guess the discussion comes down to which of those two sets of concerns one is most preoccupied with.

Mr. FLEMMING. Mr. Chairman, I believe——

Mr. MOODY. That is just my——

Mr. FLEMMING. I appreciate your analysis there.

Personally, I believe that if we return to the three-member bipartisan board, we do not have to choose between those two. It can be both/and.

That bipartisan board, it seems to me, could not very well decide. If they are reasonable people and people who really size up the nature of their responsibilities, they would decide to appoint the strongest administrator they could find in this country as Executive Director. They would say to him, "We are going to hold you responsible for the day-by-day operation of this system, and we are going to hold you responsible for presenting to us changes in the administration of the system growing out of improved technology and so on. This is what we are going to expect you to do.

"These are the standards of performance that we expect you to adhere to. If you adhere to those standards of performance, you will continue to be our Executive Director. But if you do not adhere to those standards of performance, we are not going to take over your job. We are going to get somebody else in there who will do the job in accordance with the standards of performance that we will set."

I think a three-member board can set adequate and excellent standards of performance for an Executive Director, and they can hire in accordance with those standards of performance and they can fire in accordance with those standards of performance.

Mr. MOODY. Do you feel that they would restrain themselves from mixing the daily management? You do not buy, for example, the GAO recommendation that this person be given a fixed term so they can make long-term plans and not be on tender hooks that they might be fired from day-to-day?

Mr. FLEMMING. I would place the responsibility clearly with the board. Now, they would have 6-year terms under the provisions of this bill, and they would be overlapping terms under the provisions of the bill, which I think are very good from that point of view.

But it is conceivable that this board will set the standards of performance, they will hire an Executive Director, and if he meets those standards of performance, he may be there longer than 8 years. He may only be there a couple of years, or may only be there a year, if he cannot live up to those standards of performance.

But I think that board should be free the minute they feel that the Executive Director is not living up to the standards of performance that they have set, to make a change in the Executive Director. In that way, the Congress is in a position to hold the board responsible for the end results.

Mr. MOODY. Finally, let me just ask you this. If, in fact, an independent agency is not created for one reason or another, if this legislation is not successful—as you know, a similar version passed the House last year—but if that does not come about, would you then favor the creation of an independent administrative law judge structure outside, not housed in SSA, to prevent the kinds of abuses that happened in the early eighties and that now pervades the whole appeal process?

In other words, if we do not come up with an independent agency, do you think separating out and insulating the review administrative law justice process would make sense?

Mr. FLEMMING. Mr. Chairman, I was on the Civil Service Commission when the Administrative Procedure Act was passed, and included in that was a provision for the administrative law judges. It so happened that I worked with then Attorney General Tom Clark in the development of that particularly provision.

I believe that the concept of the role of the administrative law judges, which is built into the Administrative Procedure Act, is sound.

I believe that the head of an agency such as the Social Security Administration has an obligation and responsibility to protect the independence of those administrative law judges. He would do that in the interest of wanting to make sure that the agency was being administered in a fair way.

Mr. MOODY. So your answer would be "No"?

Mr. FLEMMING. I do not favor that type of legislation. Now, I know there is legislation that has been drafted along that line. I have not had the opportunity of reading it or examining it, and if you would like, I would be very happy to do it and then make a specific comment on that proposed legislation.

But philosophically, I feel that the administrative law judges being a part of an agency and helping that agency to discharge its responsibility to operate in a fair manner is a sound concept.

Mr. MOODY. OK. Thank you very much for your thoughtful testimony.

Mr. FLEMMING. You are welcome. It is a pleasure to be here.

Mr. MOODY. Thank you.

Mr. MOODY. We would now like to call on the Honorable Robert M. Ball, the former Commissioner of Social Security.

Mr. Ball, welcome to the committee. It just so happens that the Ways and Means Committee has several subcommittees meeting all at the same time this morning; so we have had a lot of trouble getting people to people this committee. But your testimony will be read by most members and will be studied carefully.

So thank you for being here.

STATEMENT OF HON. ROBERT M. BALL, FORMER COMMISSIONER OF SOCIAL SECURITY

Mr. BALL. Thank you, Mr. Chairman. I will concentrate on just a few points in oral testimony. The summary that you gave on the issue of whether to have a single head or a board is one important point to address. The question is, can you reconcile the two objectives you outlined?

I would say that if your only concern was administrative, if you were not concerned about the other objective, I would go for a single head.

Mr. MOODY. You would go for current structure?

Mr. BALL. No.

Mr. MOODY. No?

Mr. BALL. I would have an independent agency in any event.

Mr. MOODY. Even if administration is your sole concern?

Mr. BALL. Yes. I would still have an independent agency; because I think there is duplicating staff—as the Grace commission brought out—with a huge operation like Social Security being a subordinate part of a department, it is almost inevitable that you are going to get duplication at the Secretary's level. Particularly if they are good people, staff at the departmental level are going to want to do something.

So what they will do is try to control a subordinate agency; and the first thing you know, you have layering of one job on top of the other. So I would have an independent agency no matter how it was headed. And then I would say that if you thought the only important thing was day-by-day operations——

Mr. MOODY. Or even long-term comprehensive planning.

Mr. BALL. Including that; probably a single head would be better. But I do not think that is the situation. I think the board arrangement, as with most corporations, can be made to work by their hiring and having under their broad policy direction a chief executive officer, who should have a strong delegation to carry out their wishes. I believe that a bipartisan board in charge of the setting of policy and the broad control of the operation, is very important, particularly at this time.

I have two reasons for this belief. Although it may well be true, as the Commissioner suggested, that the most important factor in restoring full public confidence in Social Security is the buildup of the trust funds now taking place—and I think that is working—it is going to take a long time, and it is not the only factor involved.

I believe you would speed up that process and reenforce it if the public saw that this really quite different kind of government operation—a group insurance and retirement insurance program—was handled differently than the ordinary Government agency, it would help to have Social Security outside the usual political appointment structure, and if there were continuity from 6-year staggered terms with both parties represented.

So my first reason is that I see the restoration of confidence in the program and the continuation of confidence as being aided by this bipartisan board structure much, much more than by a single agency head appointed by the President and changing with administrations.

Mr. MOODY. So even if you had an independent agency, you think a board provides a very important guidance function?

Mr. BALL. Yes, I do, Mr. Chairman. I support H.R. 791 very strongly; but I was trying to address myself to your dichotomy; on the one hand, administrative efficiency, and, on the other, the policy role. I would argue that, although I would give a slight edge to the single head of agency if administration were the only issue, I believe administration could be handled well just as chief executive officers appointed by corporation boards works well. There are very special reasons for wanting a bipartisan board with the staggered terms in charge of policy in the Social Security program.

I have given the first reason: the restoration of confidence in the objectivity of administration and the recognition of the unique nature of this program as guarding the rights of people who today are making contribution for benefits in many instances that won't come due for 35, 40 or 45 years. For people to have confidence in

such an arrangement we must make sure that people realize this is not an ordinary Government program subject to big changes as administrative change. Social Security is a trusteeship.

The second reason, Mr. Chairman, that I would favor the board type of organization is related to some of the earlier discussion about the disability program, but it is by no means confined to that. The disability disaster to me is just one illustration of what can happen when the policy directions of this huge program can go just from OMB to a single head of agency.

Like previous witnesses, I just cannot imagine some of those disability decisions having been acceptable to a three-person board. I don't think the majority would have done it if they had operated as a board. But in any event, the minority person, I think, before these things ever happened, would have strongly objected and objected publicly. But this is just an illustration.

Let me say that I doubt very much if a board with staggered terms would ever have put this agency through the several reorganizations that took place. There was a time when every couple of years there was a new Commissioner, and every new Commissioner had a new reorganization. That is very damaging to performance. Before they finished, one with people suspended waiting to go into a new job, there would be a new reorganization.

Another illustration of the same point is that I don't believe that a board would have put all the savings from technological advance into the reduction of staff, which is what is now happening. Now, that was primarily an OMB decision that the Social Security Adminstration accepted. Social Security is reducing staff a total of some 17,000 people, a 20-percent cut, over a period of 6 years.

There should be some cut. There is no question but that automation has reduced the need for staff in some functions. But my point is I don't think a board would have used all the savings that way. I think they would have thought: Well, this program is only spending 1 cent out of every dollar for administration; its administrative costs are supported by deductions from worker's earnings and matched by employers—that is how administrative costs are paid—a board would have thought: Are we really satisfied with just doing OK? Are we doing the best we can? Are the district offices of this organization as good a place for people to conduct their business as the best, say, of private insurance. When people come in, are they treated just as well? Is it just as convenient? Is our telephone service as easily available to people, or do they have to hang on the phone for quite awhile?

I think they would have said: Is our training as good as it can be? And I think as they made savings from technological advance, they would have plowed back some of those savings into a constant improvement in the level of service.

Now, the GAO reports, and some internal inspections of Social Security report that the agency is doing about as well as it did in 1984; and the administration has taken these reports as backing for the idea that it was good to cut staff as much as they have. It does not seem so to me. The question is, was 1984 good enough? And if you accept the idea that it is now as good as 1984, they should have taken some of the savings and tried to improve the service.

I just want to make clear that I don't think that this is all about the disability program. Disability is an illustration, and maybe the most extreme; but I think a bipartisan board is a brake against swings in policy, like reorganizations and extreme custs in staff, too; not a prevention of change, which would be bad, but a stop and think and let's see what, on a continuing basis, we want to do. The staggered terms help, too. The reasons for past decisions are better understood.

Mr. Chairman, I fully support the bill as it is. The one additional change, if I had my way—but I would love it to pass just as it is, if you can't make the small change I would like—is that like Dr. Flemming, I would have a preference for the Executive Director as the chief executive officer as in a corporation—to be responsible to the board without having a fixed term and statutorily defined duties.

I just don't think there is a danger that the board will try to operate the agency in detail. I don't believe either that they are going to fire somebody easily. It is hard to find a person of the caliber to run a huge, complicated agency like this. If they can get one, and they have got him or her and it is working, believe me, they will want to hang onto him or her. That is in their own interest. They are not going to lightly get rid of someone just because they have the authority to. But I do not think you want to make it extraordinarily difficult for them to get rid of someone if it is not working out.

I remember in the very early days when Social Security was run by a board, that they had quite a bit of difficulty in settling on the head of what we now think of as Social Security, the Bureau of Old Age and Survivor's Insurance. And in a short time, there were two or three people sort of tried out; and they did not work out very well.

And they finally got somebody who was extraordinarily good, a man by the name of John Corson—the name may be familiar to some of you—and he set the tone of that organization administratively for a long time. And there was never the slightest thought on the part of the board, just because they had the authority, to ever get rid of a successful performer like that.

Mr. Chairman, I have many other things, of course, in my statement. But those are the main points I wanted to emphasize orally.

[The statement of Mr. Ball follows:]

TESTIMONY OF ROBERT M. BALL

The Reestablishment of an Independent Social Security Board

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:
My name is Robert Ball. I was Commissioner of Social Security from 1962 to 1973. Prior to my appointment by President Kennedy I was a civil service employee of the Social Security Administration for some twenty years. Since leaving the government in 1973, I have continued to write and speak about Social Security and related programs. I was a member of the 1978-79 Advisory Council on Social Security and more recently was a member of the National Commission on Social Security Reform, the Greenspan Commission, whose recommendations were included in the 1983 Amendments. I am testifying today as an individual and the views expressed are not necessarily those of any organization with which I am associated.

I believe it would add significantly to public understanding of the trustee character of Social Security as a retirement and group insurance plan if the program were administered by a Board directly under the President. Social Security with over 60,000 employees and some 1300 district offices across the country is one of the very largest direct line operations of the federal government. It does not make sense administratively to have this huge program, which intimately touches the lives of just about every American family, operated as a subordinate part of another government agency. The management of Social Security could be made more responsive to the needs of its beneficiaries and contributors if it were free from the frequent changes in the levels of service to the public which grow out of short-term decisions about employment ceilings and the varying management value systems which follow the frequent changes of Health and Human Services Secretaries and their immediate staffs. But most important, an independent Board would be visible evidence that contributory social insurance was different from other government programs.

Just about every American has a major stake in protecting the long-term commitments of the Social Security program from fluctuations in politics and policy. The administration of Social Security by a separate Board would strengthen public confidence in the security of the long-run commitments of the program and in the freedom of the administrative operations from short-run political influence. It would give emphasis to the fact that in this program the government is acting as trustee for those who have built up rights under the system. I am, therefore, very much in favor of the passage of H.R. 791.

I believe that setting up Social Security as an independent agency under a bi-partisan Board is particularly important at this time. There has been an erosion of public confidence in the system due in part to financial problems in the late 1970's and early 1980's, and although the financing of the program is now on a sound basis, it is going to take some time to restore full public confidence. Making the program an independent agency under a Board form of organization with bi-partisan membership would be a helpful step in bringing about this much needed restoration of confidence.

The issues here are not by any means entirely administrative. The argument for an independent agency is largely administrative, but the argument for the Board form of organization on a bi-partisan basis with the continuity arising from term appointments is desirable primarily to underline the long-range character and trustee nature of the government's responsibility.

In addition, the fact that the Board is bi-partisan acts as a brake on major swings in policy, particularly those of doubtful validity. It seems to me unlikely that under a Board form of organization we would have had the major shifts in the administration of the disability program that has characterized the last several years. A Board with a minority member would

have been unlikely to remove hundreds of thousands of people from the disability rolls and later restore benefits to a large percentage of them through the appeals process. Nor would a Board have adopted a policy stance that caused many Governors under contract with Social Security to refuse to carry out Social Security's directions. And a Board would have been unlikely to pursue a course overturned by the courts in literally hundreds of cases. I would have expected, rather, that at least the minority member of the Board would have raised public questions about the policy before it was adopted, and it is even more likely that a majority of the Board would have thought a long time before adopting such a damaging set of policies. Under the organizational set-up in effect in the 1980's, policy seems to have gone directly into action by agreement between OMB and the Commissioner of Social Security without much review, certainly without a bi-partisan review.

Even on smaller matters such as administrative reorganizations, I believe a Board would have been more conservative and advisedly so. For awhile, Social Security seemed to be getting a new Commissioner every year or two and, with each new one, a sweeping reorganization. Such constant change is damaging to performance.

Another example of an administrative decision where the checks and balances of a bi-partisan board might have been useful is in the planned reduction of Social Security's staff over the 6-year period from 1984 to 1990. The plan has been for a 20 percent reduction from the 1984 full-time equivalent level of approximately 80,000 people down to 63,000.

There is little doubt but that some reduction in staff has been desirable due to the further automation of Social Security procedures. But a question can be legitimatly raised about the plan adopted. It may be true, as some studies have suggested, that Social Security is delivering a level of service not greatly inferior to what it delivered in 1984, but I believe a bi-partisan Board would have carefully examined whether service could and should have been improved from the 1984 level as automation was further introduced, rather than translating the technological advances entirely into reduced staffing.

The reduction of 17,000 full-time equivalent positions was a number negotiated with the Office of Management and Budget primarily with the object of reducing administrative costs. But in OASDI the more relevant question may be how to improve service, not how to get by with fewer people. A bi-partisan Board might well have taken the view that, since administrative costs are only about 1 cent out of each Social Security dollar and are paid for out of dedicated deductions from workers' earnings and matching contributions from employers, savings from automation should go first to improved service--making sure that district offices are efficient and pleasant places for the public to carry on its business with Social Security, making sure there is adequate outreach service from the district offices to people who have difficulty getting to the office, making sure there is adequate public information activity, making sure handicapped people have sufficient help with their Social Security business, making sure the telephone service is adequate so that people do not have to wait on the phone for long periods of time in order to reach an office, and, in general, making sure the administrative values are those of the highest level of a public service agency. What has actually happened is a negotiated arrangement between Social Security and OMB, with the emphasis on the reduction of staff and lower administrative cost and without the kind of emphasis on service levels that is important in this kind of program. I believe a bi-partisan Board would have very likely done better, or the minority member would have made an issue of it, just as I believe he or she would have in preventing the policy decisions that led to the disability disaster.

So there is in the bi-partisan Board organization, I believe, a check on unwise action as well as an institutional arrangement which will give people confidence in the handling of the finances of the program and the objectivity of administration. By and large, these are the advantages of a Board form of organization rather than day-to-day administrative efficiency.

The case for an independent agency can be made on administrative grounds alone. As pointed out by the Grace Commission, making a huge operation like Social Security a subordinate part of a Department creates duplicating staff services and repetitive levels of decision-making. Duplication is almost unavoidable. Social Security is big enough to have its own personnel services, budgeting, comptroller activities and everything it takes to make a big organization work. At the same time, a Secretary's staff feels the need to understand and control the activities of the subordinate unit so that the relationship between the agency and the outside world tends to be filtered through a second level of staff activity.

Now it is true that, in practice, during the initial period the Social Security Administration was part of a Department, it enjoyed a very substantial degree of independence. This was certainly true when I was there, but I have a strong impression that this independence has eroded. It is very likely that one reason there was such a contrast in the implementation of the Medicare program, which went extremely smoothly, and the implementation of the Supplemental Security Income program, which was pretty bumpy, was the degree of delegation which the Secretary and his staff were willing to make to the Social Security Administration. In the implementation of Medicare there was a very strong delegation to Social Security, and it was the only way that the program could have been put into effect successfully in the time available. The tasks were enormous and if decisions had been held up at the Secretary's level, there would have been an impossible situation. In that setting, Social Security operated almost as if it had been an independent agency, making its own arrangements with the rest of the government and receiving great help and support from the rest of the government.

In the case of the implementation of the Supplemental Security Income program, policies had to be cleared in the Secretary's Office whether they were fundamental questions of direction or not, whether they were solely administrative issues, procurement issues, or whatever, and the result was inevitable delay, duplication, and lack of clarity in instructions out to the field where the work was being done.

So it is possible to administer the Social Security program well within a Department, providing there is more or less complete delegation to the organization. On the other hand, there is almost no contribution, if any, to the smooth functioning of Social Security from being a subordinate part of a Department, and in recent years there have been very strong disadvantages in the layers of clearances required.

Mr. Chairman, I believe H.R. 791 also greatly improves both the appearance and reality of the trustee function. Under present law, the managing trustee of the Social Security trust funds is the Secretary of the Treasury. He is very much in charge. The other trustees do not have much authority under the Act although they do have responsibility in connection with the trustees annual report to Congress. Investment is just about completely in the hands of the Secretary of the Treasury.

Ordinarily this does not create difficulty because the statute itself carefully determines the coupon rate on new investments in special issue securities, which in recent years have been the only investement instruments used. The areas in which the statute grants discretion are (1) the extent to which the funds

might buy government securities on the open market, (2) the question of whether the funds should buy U.S.-backed securities of government instrumentalities, and (3) what the maturity dates on special issues should be. The trustees for a long time have adopted a policy on maturity dates designed to come as close as possible to having the whole portfolio evenly distributed over a 15-year period. Nevertheless, the managing trustee has considerable statutory discretion on all three of these matters.

There is something of a conflict of interest between the Secretary of Treasury's role as the primary trustee of the trust funds and his role as the chief financial officer of the government. In his role as Secretary of the Treasury it is to his interest to reduce the burden to the general treasury of interest payments to the trust funds. As the managing trustee of the trust funds he is charged with securing the highest possible rate of return for those funds. Most of this conflict has been resolved by statutory rules that are intended to be fair both to the trust funds and to the Treasury. Yet there is a problem in having one person attempt to exercise both of these functions. In recent years an outstanding example of a direct conflict of interest has occurred in connection with the debt ceiling. When the Treasury bumps up against the debt ceiling it, of course, is unable to borrow for any purpose, including the payment of interest on the outstanding debt of the United States or the payment of Social Security benefits. The managing trustee of the Social Security trust funds more than once has resolved the issue in favor of the Treasury rather than the trust funds. Specifically, he has cashed in Social Security debt to give room to the Treasury to borrow. In place of interest-bearing securities in the trust funds, the Treasury made notes of what was owed to the trust funds, with the intention of later making good, but it took an act of Congress to make up for the loss of interest and to restore the integrity of the funds. In the meantime, the trust funds had been put at some risk of interest loss, and there was, at a minimum, a public relations problem of loss of faith in the integrity of the Social Security funds. Several organizations, individuals and members of the Congress went into court to prevent the managing trustee from continuing this action. There was no lasting damage from this activity on the part of the Secretary of the Treasury, but it demonstrated clearly the possibility of a conflict of interest between his or her role as chief financial officer for the whole government and as a trustee of the trust funds.

The Secretary of the Treasury is needed as the day-to-day administrator of the Social Security funds. Only he is equipped to carry out the routine functions of fund management, but I believe that the provisions of your bill, Mr. Chairman, are a big improvement in shifting policy decisions to a new Board of Trustees. H.R.791 subjects the Secretary of the Treasury to policy direction by a Board that has the interests of the Social Security trust funds single-mindedly at the center of its responsibility. This is a good move. Policy should be set by a Board of Trustees that does not have the kind of conflict of interest that a Secretary of the Treasury has inherently.

Some people who oppose setting up Social Security as an independent agency have argued that Social Security will not be as well represented in the councils of government as it is today because there will be no one at the Cabinet table to explain and defend the interests of the Social Security program. Although there is some merit in this contention, I do not find it persuasive. Surely any President would invite the chairman of the Social Security Board to attend Cabinet meetings when the discussion involved Social Security. Nevertheless to emphasize this point you may find it desirable to have the Committee report on this bill make clear that it is the

intention of the Congress that the Chairman of the Social Security Board be directly involved in White House and Cabinet discussions of all matters that affect the present and future of the Social Security program.

There is, of course, no single right way to organize the functions of the federal government. Some of the possibilities are to group things together by subject-matter similarity. This is the principle that brought together the two medical care payment programs of Medicaid and Medicare. Another possibility, however, is to group by type of administration, that is whether a program is administered primarily at the federal level or primarily at the state level, with the federal role being one of financing and standard setting. Still another possibility is putting together those things that have a similar program approach, such as grouping together all social insurance programs where the right to benefits grows out of past work and contributions, as compared to welfare programs where the object is to bring people up to a minimum standard of living based on an examination of their income and resources.

All of these approaches and others have been used in the past. The principle of direct federal operation and the similarity of approach in social insurance led originally to Medicare being administered by the Social Security Administration, and there is a case to be made for the return of Medicare to a newly established Social Security Board. In favor of it are not only the organizational considerations I mentioned, but the fact that Social Security has district offices all over the country that can help people with information about Medicare and with the filing of claims, a resource not now available to the Medicare beneficiary. But the practicalities are against this move. After Social Security is removed from the Department of Health and Human Services what remains in the Department are largely health related programs, and if the Medicare program were also to be removed, the rationale for the Department is considerably weakened. And undoubtedly the removal of Medicare would be strongly resisted by most people primarily interested in health programs. Thus I support the decision of the Chairman to establish an independent Social Security Board with responsibility solely for Old-Age, Survivors, and Disability Insurance plus the closely related Supplemental Security Income program, (SSI).

The organizational principle that justifies including SSI in this new entity is the avoidance of obvious and important duplication in the operation of direct benefit programs of the federal government. It would be ludicrous to establish a nationwide network of offices to administer SSI separately from Social Security when most beneficiaries of SSI are also Social Security beneficiaries. The two programs can be handled by the same administering agency at greatly reduced cost and greatly increased convenience for beneficiaries if they are kept together. So this should be done, even though one has to recognize that administering these two programs in the same agency has created some public confusion, and I must say also, at least in the beginning, some confusion on the part of the staff in the Social Security Administration. The SSI program is paid for entirely out of general revenues and is a direct welfare program. Everybody needs to understand that. The reasons for having the two together are for the convenience of the public and for administrative saving to the government. They are philosophically and financially very distinct programs.

At the same time there is no reason for Social Security to be involved once more in the AFDC program. AFDC is a state-administered program and there is no significant beneficiary overlap with Social Security or SSI.

The bill leaves AFDC in the Department as I believe it should. When I was Commissioner of Social Security I was at first responsible for the AFDC program and the Old-Age Assistance program, the predecessor program to SSI, as well as Old-Age, Survivors, and Disability

insurance but there were almost no situations in which there was any need to consider policy in AFDC at the same time one considered policy in OASDI. They were just two completely separate operations and almost entirely separate policy entities. I had to turn my attention from one program to the other. You could not look at them together, and they got nothing out of being grouped together. The time spent in staff meetings by the heads of one agency listening to the problems of another could have been spent better in other ways.

I would, however, give the research arm of the new Social Security Board a mandate to pursue research in the whole area of economic security. It is not desirable, in my view, to restrict the research mandate as narrowly as the bill does. In social insurance, over the years, one of the most important research questions in the provision of economic security has been the relationship of social insurance to welfare, on the one hand, and private activities on the other hand. I would use language similar to that in the present Social Security Act in describing the research function of the new agency. If there is some degree of overlap with other agencies in the research area, it can be worked out informally without restricting the mandate by statute. In research there is always more to do than there is money to do it.

I believe the relationship of the new Social Security Board to the Executive Office of the President, particularly the Office of Management and Budget should be similar to any Cabinet department. I do not argue that the independence of a Social Security Board should remove it from the ordinary oversight of the President and his control agencies. Legislative proposals, for example, should be made by the President. However, in certain respects Social Security is large enough to conduct its own service activities and to do so more efficiently. For example, I would certainly grant the new Social Security Board very strong delegations in the personnel area to determine its own recruitment policies and classification work, and I note that the bill provides for this on a demonstration basis. I believe, on the whole, Social Security could do a better job in space management and space procurement than working through the General Services Administration. It should certainly have its own General Counsel, as the bill provides, but such Counsel should have the same relation to the Justice Department as any other Department of government would have when it came to dealing with the courts.

The object here is not to set up an entity with the same degree of independence, say, as the Federal Reserve Board which operates very largely outside the President's control in almost all respects. The object here is to secure a combination of administrative efficiency and to demonstrate an objectivity of administration and a trusteeship of established rights that is called for by long-range commitments. These goals by no means require the elimination of the oversight function of OMB and the other control agencies of the President.

There is really no logical basis for the present grouping of programs in the Department of Health and Human Services. The relationship of Social Security to other agencies within HHS is not very close. In fact, Social Security's relationship with other government departments is frequently much closer. For example, Social Security must closely coordinate its coverage decisions and its work with the Internal Revenue Service which has responsibility for collecting Social Security taxes. I can think of very little of any importance that Social Security has in common with the other agencies grouped within the Department of Health and Human Services.

Mr. Chairman, there is just one point in the bill, in addition to the point on research, that gives me pause. Those who advocate an independent agency under the direction of a single

individual rest their case to a considerable extent on the possibility of overlapping functions between the Board and an administrator. They argue that distinctions between policy and administration are not clear enough to keep the Chairman of the Board and the administrator out of each other's hair. They argue that getting agreement within a Board is inherently more difficult than the decision of one person, and that if you have both a Board and an administrator you compound the difficulty of responding quickly to administrative problems or in carrying out day-to-day operations. They make a good point. If all that was at issue was the efficiency of day-to-day operations, it is probably true that a single head would be a better form of organization. But as I have tried to point out there is much more at stake here than day-to-day operations. Stil it is desirable to set up the Board organization so as to minimize any potential for conflict between the Board Chairman and an executive director, the day-to-day operator.

The relationship that I envision is not too different from that of the Chairman of a board of a corporation or a non-profit organization and the chief executive officer. I would give the Board responsibility for selecting the top administrator, as the bill does, but I would also give the Board the power to define the duties of the job and remove the top administrator in the unusual situation where they couldn't get along. I think there is the potential for a problem if the executive director with responsibility for operations has a set term and duties defined in statute that are separate from those of the Board. I think it ought to be made clear that the Board in all respects is the top authority--that it is the Board that is responsible for the whole program in all its aspects and that they hire a chief executive officer to carry out their will. I would hope the legislation would put all responsibility in the Board and let them get the help they need to carry out the work.

This would not by any means result in frequent turn-over in the administrator any more than is the case in a corporation where the Board of Directors hires and fires the chief executive officer. A Board will not go to the trouble of selecting a top officer of the caliber needed for this job and then force him or her out without good reason. That just makes their life more difficult. I believe a Board will be very responsible in the selection of a person whose primary duties are administrative and will stick with him or her as long as that chief executive officer is doing a good job. But don't make it too difficult for them to replace that officer in the event that things don't go well.

Mr. Chairman, I fully support H.R. 791 and believe that its passage would make a major contribution over the long run to the smooth functioning of our Social Security system and to the restoration of complete confidence in the integrity of the program.

Thank you very much for the opportunity to discuss this important matter with you and the members of the Committee.

Mr. MOODY. Thank you. Mr. Jacobs?

Chairman JACOBS. I would just like to thank you for your testimony, Mr. Ball.

Mr. MOODY. Let me just ask you a question. It occurs to me that a three-person board might have the temptation, particularly with no fixed term for the executive director—and it depends on the individual, of course—but a board that small, particularly if they were virtually a full-time board, might have a very strong temptation to inject themselves into management. It would be a very hard temptation to resist, really.

If there was a larger board no individual would be as likely to do that. If you had a very dominating personality in a three-member board he or she would just be on the phone constantly or be injecting himself or herself constantly. If we had a seven or a nine-member board, it would dilute any one person's temptation to try to take over and be the de facto head of the agency.

Mr. BALL. Would you have the chairman be a full-time and then a——

Mr. MOODY. You might. I am just thinking out loud here. And the other aspect, if you have a bipartisan board, which you would want one person, in effect, could, in fact, dominate that. Whereas if you have a seven- or nine-member with a one vote edge to, let us say, the dominant party that happens to be making the appointments, that dilutes it a little bit.

It is not as powerful a swing, if you will, when you have a 4-to-3 ratio, as when you have a 2-to-1 majority.

Mr. BALL. Yes. That is more the format of the Post Office.

Mr. MOODY. Yes. I mean, a 2 to 1, if you had a fairly unassertive one, that person might almost become invisible. Whereas if you had a three-person minority in a seven-person board, for example, it would be less likely that any one person would cop out.

Mr. BALL. I don't think there are some sort of absolute principles of public administration that make it easy to decide these things. I have some concern, however, about a large board from the standpoint of getting into representation. If you have eight or nine members, say, there is the real possibility that everybody who has an interest in Social Security is going to want to have——

Mr. MOODY. A seat.

Mr. BALL [continuing]. Their person on the board. And you get a labor person and a senior citizen person and a disability person, that seems to me to cause real trouble—to try to get agreement then among what are really representatives of various constituencies.

I was hoping that a small board, but full time, would spend the time to know the operations and the policy well, but to have the discipline under a good chairman to let a topnotch Executive Director run the place day by day. And there is plenty to do to assess what is going on; plenty to do to read and act on policy.

Let me tell you, Mr. Chairman, a little bit about the way Social Security worked as a board, back in the old days. When I came to work for Social Security in January of 1939, it was a board form of organization. They met in a very formal situation on major policy issues. Incidentally, it created a wonderful record for public administration. The constituent organization that had a policy point to

bring up—and these were only important policy matters—would prepare a recommended position with a reasoned backup; and then as many Presidents have operated with a Cabinet, the policy paper would be circulated to the other constituents in the agency who would comment for or against the position. The various papers would then all be brought together before the board, sitting formally as a board.

The board would decide and a minute would be written, giving the reasons for the decision. And you can really find out why it is that Social Security decided a particular way on a particular issue—I mean, in the old days, you could; I don't think you can now. But a formal record was made of the pros and cons and why the decision was taken. That is a time-consuming process. It should be confined to important policy; but people aren't sitting around wasting time if they are going to really understand the proposed policies and the differing views about them.

Mr. MOODY. Did the board have its own analytic capacity, its own staff? Did the board members have staff so that they could develop position analyses of their own, or were they dependent on the agency for analysis?

Mr. BALL. They did not have their own individual analytical staff. They had a research and policy group that was available to them all; but the minority did not have its own and the majority have its own.

Mr. MOODY. They had to use the agency staff? They were dependent on agency analysis for any particular policy initiative that might be discussed?

Mr. BALL. Yes.

Mr. MOODY. Do you think, if we were to create this independent agency with a board like that or some board, that it should have its own analytic staff? Or should it be dependent on the agency staff?

Mr. BALL. I would probably make it dependent on the civil servants in an agency staff. My experience has been that the overwhelming majority of civil servants are extraordinarily objective.

They are very responsive to people whose work they are doing. I don't think you would need separate analytical capacity, though you might want a minority member to have, say, one or two schedule C people that could help him or her. That might be a good idea. I had not thought of that.

Mr. MOODY. And finally, if an independent agency is not created, but rather we attempt to reform the existing structure, what is your reaction to the separation of the administrative law judges and giving them some insulation, some independence, to prevent the kind of spectacle we saw in 1981 and 1984 with disability reviews.

You are aware there is a proposal to——

Mr. BALL. Yes, I am. Mr. Chairman, I don't know how much my response is the result of bias I acquired in serving as Commissioner for 11 years, and how much it is completely objective, but I would not favor that. And the reason is this: The hearings on the part of the administrative law judges, by and large, relate to an individual case—and I think they ought to be completely free to decide that case under the regulations and the law, and I don't think anybody ought to be reversing them internally—but the question of whether

a policy decided in an individual case should be applied broadly and govern the future decisions of other administrative law judges, I think, becomes a matter for the Commissioner under present arrangements or, if it were an important matter, a board, under the bill. If they reported to someone else you could get a policy conflict.

The way we did it when I was Commissioner was to make a Commissioner's "minute" out of those administrative law judges' decisions that I, as Commissioner, accepted as new policy to govern similar cases. But most of the time, what they are doing is to make sure that the application of existing policy is being carried out correctly. The hearing process is really the last stage of individual adjudication, not the setting of precedents.

Mr. MOODY. But how about insulating them from the kind of pressures that they apparently were under in the first term of the Reagan administration?

Mr. BALL. I think that was awful, but I think it is hard to legislate against the perversion of an idea. And certainly a board would help prevent that; but you are asking me the hypothetical question, supposing the organization stays as it is, could it happen again?

Mr. MOODY. Yes.

Mr. BALL. I guess it could; and we ought to be a little more alert—those of us in the public and perhaps in Congress—to the early stages of such a development and move in to correct it.

Mr. MOODY. Do we not want an essential independence for people making these quasi-judicial decisions? Then, therefore, is not an administrative response appropriate, as has been proposed?

Mr. BALL. Well, I think we do want them to be absolutely independent on the decisions of the individual cases. But I think you need them to be within the framework of your overall policy for the organization that they serve.

Mr. MOODY. They would not be accountable in policy terms if you house them in administratively separate agency——

Mr. BALL. I think that is the other possibility. To my mind, this is a fairly close question, as I suggested at the beginning.

Mr. MOODY. Thank you very much.

Chairman JACOBS. We would next like to call on Mr. Erling Johnson, chairman of the board of directors of the American Association of Retired Persons.

Mr. Johnson.

STATEMENT OF ERLING JOHNSON, CHAIRMAN OF THE BOARD OF DIRECTORS, AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. JOHNSON. Good morning, Mr. Chairman. I think it is still morning.

Chairman JACOBS. The sun has just passed over the yardarm. [Laughter.]

Mr. JOHNSON. You are aware fully, I am sure, that the AARP, the American Association of Retired Person, is a membership organization which represents the interests of Americans aged 50 and over.

The association appreciates the opportunity to present its views on H.R. 791, establishing an independent agency to administer Social Security. AARP supports H.R. 791. We believe creating an

independent agency to administer the Social Security and supplemental security income—SSI—programs is a definite step forward.

Adoption of this legislation would help ensure that these programs are administered in a stable and professional manner. An independent Social Security Administration—SSA—represents an important step toward rebuilding public confidence in the program. Confidence in SSA has been steadily eroded over the past several years, we believe, due in part to the agency's longstanding problems in management and service delivery.

Today the Social Security Administration is the largest Federal agency without independent status. We believe that it needs strong, stable and independent leadership; and this is one of the most powerful arguments for creating an independent agency.

Throughout most of its history, SSA was hailed as a hallmark Federal agency, providing quality service to the public in a cost-effective way. I regret, however, to say that that image has been seriously eroded.

Since the late 1970's, SSA has endured successive and rapid turnover in its top leadership. Between 1978 and 1983, there were three SSA Commissioners, each serving 2 years or less. They were followed by several Acting Commissioners.

As the General Accounting Office—GAO—reported, the short tenure of recent SSA Commissioners has contributed to the agency's inability to establish clear management priorities or develop a consistent direction. Likewise, its current status as part of the Department of Health and Human Services has made it more difficult for SSA to operate solely for a Social Security-based agenda.

This is because the HHS Secretary understandably cannot always make Social Security the number 1 priority. Furthermore, the current status of SSA makes it vulnerable to the imposition of policies and practices which inhibit the agency from fulfilling its mission.

The most conspicuous example of such policymaking belongs to the Office of Management and Budget. We are very concerned about the fact that that situation made it possible for 17,000 persons to be removed from the staff. Reducing the staff level in SSA offices has affected the quality of service. This action was unwarranted, since the program's administrative costs are small as has been indicated by previous witnesses, and are financed out of the trust funds.

The policy was adopted as a budget gimmick without regard to what is best for Social Security. Budget gimmickry has no place in a program of such vital importance. Current and future beneficiaries must know that they can count on a Social Security system that not only provides adequate financial benefits, but also provides a competent, effective, and humane means of delivering the services associated with these benefits.

An independent Social Security agency would recognize that the program represents a social contract between the American people and their Government, which has lasted over 54 years. It would be a clear signal to the American people that Congress is committed to protecting the Social Security program for the long term.

I want to thank you very much for the opportunity to state our position. We look forward to working with your committee towards enactment of H.R. 791.

[The statement of Mr. Johnson follows:]

STATEMENT OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS

INTRODUCTION

The American Association of Retired Persons (AARP), a membership organization representing persons 50 and over, appreciates this opportunity to present its views on establishing an independent agency to administer Social Security. We commend the committee and its chairman, Representative Jacobs, for holding this timely hearing on an issue which affects the lives of today's and tomorrow's older Americans.

AARP supports H.R. 791, introduced by Representative Jacobs, which would create an independent agency to administer the Social Security and Supplemental Security Income (SSI) programs. Adoption of H.R. 791 would help ensure that these programs are administered in a stable and professional manner.

The Social Security Administration (SSA), one of the largest and most widely known federal agencies, directly serves the needs of over 38 million beneficiaries and indirectly touches the lives of almost all Americans. It issues new and replacement Social Security cards, maintains the wage records of 133 million workers, and processes millions of claims and information requests annually. SSA's workload will continue to increase as the population ages and the workforce continues to grow. In order to accommodate this growing workload and improve the quality of service to beneficiaries, SSA must function in a stable environment that is conducive to long-range planning. Also, it should be run by competent, professional management and adequately staffed by knowledgeable people so as to serve the public effectively.

HISTORY

When Social Security was enacted in 1935, an independent Social Security Board was established to administer the programs in the Social Security Act. It operated as a free-standing agency with jurisdiction over both social insurance and means-tested programs. In 1939 this board was placed under the then newly-organized Federal Security Agency. In 1946 the board was abolished and replaced by a single administrator. When the Department of Health, Education and Welfare replaced the Federal Security agency in 1953, the Social Security Administration was grouped together with an array of welfare, rehabilitation, drug, education and health services programs in the new department. In 1977 the Medicare and Medicaid programs were removed from the Social Security Administration's jurisdiction.

Today the Social Security Administration is the largest federal agency without independent status. (Only the Veterans' Administration was bigger, and it recently was elevated to cabinet status.)

PROVIDING STABLE AND INDEPENDENT LEADERSHIP

The need for strong, stable, and independent leadership is one of the most powerful arguments for creating an independent agency. Throughout most of its history SSA was hailed as a hallmark federal agency providing quality service to the public in a cost effective way. However, since the late 1970's SSA has endured successive and rapid turnover in its top leadership. Between 1978 and 1983, there were three Commissioners of Social Security, each serving two years or less, followed by several acting commissioners. In fact, SSA has had ten commissioners over the last fifteen years; in contrast to only eight commissioners in the preceding 25 or so years.

The short tenure of the many recent SSA commissioners, has contributed to the agency's inability to establish clear management priorities or develop a consistent direction. As the General Accounting Office (GAO) reported in 1987 ("The Social Security Administration: Stable Leadership and Better Management Needed to Improve Effectiveness") SSA has been unable to correct significant, long-standing problems in management and service delivery, provide a clear and consistent sense of direction to its components, adequately control its systems modernization efforts, or focus on personnel management.

The current relationship between the Social Security Commissioner and the Secretary of Health and Human Services (HHS) is problematic. The agency is but one part, albeit a very significant part, of the HHS umbrella. The Secretary, of necessity, must divide his or her time among the various HHS components. Moreover, the Secretary acts as an intermediary between the Commissioner and the President. At times this can be beneficial, but at others it can be detrimental, especially when the HHS secretary knows little about Social Security or is understandably preoccupied with other departmental business. Finally, the Secretary may be willing to sacrifice the interests of SSA in order to address other priorities.

The current status of SSA makes it more vulnerable to the imposition of policies and practices which inhibit the agency from fulfilling its mission. The most conspicuous example of such policy making belongs to the Office of Management and Budget (OMB)-ordered five year, 17,000 person staff reduction. The OMB proposal largely resulted from a desire to show short-term budget savings, not from considerations of what is best for the overall management of the agency and the public it serves.

Reducing the number of staff in local SSA offices has diminished the quality of service to Social Security beneficiaries. This course of action was unwarranted since the program's administrative costs, financed out of the trust funds, already are extremely low. Such reductions have no real effect on the current causes of the federal deficit. It is clear that this policy was adopted as a "budget gimmick" without regard to what is best for Social Security.

While not as significant as OMB in impact, the role of the Office of Personnel and Management (OPM) and the General Services Administration (GSA) also affect the agency's operations. OPM policies and procedures, especially OPM-established salary rates, have hampered the agency's efforts to recruit and retain some computer specialists. Also, OPM has not always provided SSA in a timely manner with lists of qualified personnel for other top level positions. GSA has sometimes been slow in obtaining space, and, in some cases, actually procured unsuitable sites.

We note that H.R. 791 would grant an independent Social Security agency with demonstration to perform certain management functions controlled by OPM and GSA. Specifically, it would be able to recruit, compensate and manage personnel; and acquire and maintain facilities and automated data processing (ADP) equipment.

INCREASING OPERATIONAL EFFICIENCY AND EFFECTIVENESS

SSA is responsible for large-scale activities of crucial importance to millions of Americans, and it ought to have a greater say over its own resources, policy, and budget. Yet as the GAO reports the agency's operations sometimes have been marked by confusion and the absence of a sense of direction.

SSA's efforts to modernize its automated data processing system exemplify the problems inherent in SSA's current status. It takes years to plan, design, and build a comprehensive computer system of the magnitude needed by SSA. However, the size and complexity of the ADP problem is hard to grasp for new management. As a result, some of the shorter-term commissioners, perhaps recognizing the tenuousness of their position, focused only on one or two aspects of the problem. This meant that the agency fell further and further behind. Although Commissioner Hardy has sought to modernize the ADP system rapidly, problems persist, especially in the software development area.

Not only have the changing faces in the commissioner's office produced an instability which hinders the development and effective implementation of policy in many areas, but the turnover also has produced counterproductive agency reorganizations that often accompany a change in leadership. Between 1975 and 1983 four major internal reorganizations took place. Not only do such reorganizations consume precious time that otherwise could have been used to implement existing plans, but they also inhibit the growth of a stable cadre of professional managers.

DEVELOPING PUBLIC CONFIDENCE

During the late 1970's and early 1980's public confidence in Social Security waned noticeably because of the financial difficulties the system faced prior to 1983, and the use of Social Security as a "political football" during the annual budget debate.

Current and future beneficiaries must know they can count on a Social Security system that not only provides adequate financial benefits, but also provides competent, effective and humane means of delivering the services associated with these benefits. An independent agency might be less affected by political factors -- it might be better insulated from the fluctuations in politics and policy that produce sudden shifts in direction. An independent agency would strengthen the agency's long-term commitments and protect it from unwarranted upheavals in senior level management. It would make a strong statement to the American people that Social Security is self-financed and that policy and budget decisions affecting the program ought to be reached wherever possible independent of other federal government short-term decisions. A free-standing Social Security agency recognizes that the program represents a social contract between the American people and their government which has lasted over 54 years, and that will endure for a long time to come.

Thus, an independent SSA represents an important step toward further rebuilding of public confidence in the program. It would be a clear signal to the American people that Congress is committed to protecting the Social Security program for the long-term.

CONCLUSION

AARP believes the creation of an independent agency to administer Social Security would assure that the daily functioning of this vital program would be stabilized. The confidence of the American people can only be maintained if they are assured that the program is being administered in a fair, efficient and professional manner. We look forward to working with the committee towards enactment of H.R. 791.

Chairman JACOBS. Thank you, Mr. Johnson. Does your organization have any fine-tuning suggestions with regard to this legislation, any——

Mr. JOHNSON. Any what?

Chairman JACOBS. Any amendments at all? Would you change it?

Mr. JOHNSON. No. We support the bill as it presently is.

Chairman JACOBS. Hook, line and sinker? [Laughter.]

Well, we thank you for your testimony, sir.

Mr. JOHNSON. Thank you.

Chairman JACOBS. Our next witnesses are a panel including the American Federation of Government Employees, Mr. Sturdivant; National Treasury Employees Union, Robert Tobias, national president; Association of Administrative Law Judges, Administrative Law Judge Ronald G. Bernoski. And if there is no objection, we would like to let Mr. Tobias testify first. He has a pressing engagement.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. TOBIAS. Thank you very much, Mr. Chairman. I really appreciate that accommodation.

NTEU strongly supports the establishment of SSA as an independent agency. As every witness who has come before you today has testified, the Social Security Administration manages a program that touches all Americans, and the efficiency and the integrity has declined because of the arbitrary and capricious budgetary and policy directives imposed on the agency.

The current administrator of SSA has been pushing forward with a foolhardy plan of reducing SSA employees by 17,000 positions over 6 years. This plan, which was recommended by the Grace commission and imposed by OMB, is a calculated assault on the machinery that serves millions of senior citizens and needy Americans. The theme of "SSA can do more with less" makes a mockery of the dedicated service of thousands of SSA employees who are enduring increased workload pressures and face disruption of their careers.

In addition, an SSA poll among managers revealed that one-third of the respondents said they rarely leave the office with a sense of accomplishment, and less than one-fourth recommended SSA as a good place to work. The majority of the managers, 76.9 percent, said SSA was not a better place to work than it was a year ago. Only 1 in 10 believed that it would improve.

One of the most severe management problems in SSA was highlighted by GAO in its report on error rates. They found the error rate to be twice what SSA is reporting, with errors affecting one out of every eight beneficiaries, for an average of 5 years, and costing the trust funds $1.1 billion a year, compared to SSA's $600 million estimate.

In addition, SSA staff reductions and mismanaged modernization efforts are costing over a million senior citizens on fixed incomes a bag of groceries a month. They are costing the Social Security trust funds, as I have mentioned, $1.1 billion annually, and they are

taking a priceless toll on the thousands of dedicated employees who sincerely want to serve the country's Social Security recipients effectively and efficiently but are thwarted in their efforts by the approach that this administration is taking.

The passage of H.R. 791 cannot by itself resolve all of these very serious problems. But the creation of an independent SSA would be a vital first step in reversing the trend of the last 8 years. It would depoliticize an agency that has run on politics over the last few years. It would provide stability at the top. It would allow for the creation of long-term business operation plans, instead of the short-term response of one Commissioner after another who gets the opportunity to reinvent the wheel. And it would give the agency new broadened personnel authority. Finally, it would allow the SSA to correct the failure to allow staff attorneys to become administrative law judges, which I more fully set out in my testimony.

In conclusion, Mr. Chairman, we believe that the passage of H.R. 791 would go a long way toward remedying the major deficiencies in SSA's ability to render responsive, caring service to the public. It would also greatly enhance employee morale and pride in the service. We believe that this idea of having a pride in where you work will lead, just on its face, to some of the many problems that SSA is facing. NTEU is willing to work with you, Mr. Chairman, in any way necessary to help ensure enactment of this very most important piece of legislation.

I thank you for providing us with the opportunity to testify.

[The statement of Mr. Tobias follows:]

STATEMENT OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman and Members of the Subcommittee:

I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 140,000 Federal workers including all Social Security Administration employees in HHS regional offices, and attorneys in the Office of Hearings and Appeals. I am pleased to have the opportunity to testify today on H.R. 791, which would create an independent Social Security Administration.

NTEU strongly supports the establishment of SSA as an independent agency. The Social Security Administration manages a program that is of vital importance to most Americans. Over the past eight years, public confidence in Social Security has greatly declined because of arbitrary and capricious budgetary and policy directives imposed on the agency.

The current Administrator of Social Security has been pushing forward with a foolhardy plan of reducing SSA employees by 17,000 positions over six years. This plan, which was recommended by the Grace Commission and imposed by OMB, is a calculated assault on the machinery that serves millions of senior citizens and needy Americans. The theme of "SSA can do more with less" makes a mockery of the dedicated service of thousands of SSA employees who are enduring increased workload pressures and face disruption of their careers.

Surveys taken both by GAO and by SSA itself have shown steadily declining staff morale. GAO surveyed SSA employees about the effects of staff reductions, and found that 56% believed the losses they had experienced had a negative effect on the ability of their units to produce quality work. The most frequently mentioned effects were larger workloads for remaining staff to process, lower morale and more stress, apathy, frustration, backlogs, untimely processing of workloads, and tasks inappropriate to grade level.

In August, 1987, SSA distributed a 39-item opinion poll to its 9,000 supervisors and managers to assist in "gauging the morale and communications needs of SSA's managerial workforce." The response rate to this mailout was 55%. Dissatisfaction with SSA's downsizing process was expressed by 67% of the respondents, with operations managers (70.8%) more dissatisfied than staff supervisors (58.2%). About one third (1/3) of respondents said they rarely leave the office with a sense of accomplishment and less than one-fourth recommended SSA as a good place to work. A majority of managers (76.9%) said SSA was not a better place to work than it was a year ago. Only one in ten believed that things would improve.

SSA's management of staff reductions has been particularly abysmal in the Program Service Centers (PSC's). These Centers have borne significant staff cuts, as well as upheaval in the critical Claims Authorizer (CA) positions, caused by shifting

final claims authorization from PSC's to district offices. The most complex and error-prone cases, that were formerly handled by CA's, have been thrust upon District Offices which lack the experienced and trained people to handle this additional workload. In 1987, NTEU said that this policy -- called DOFA, for District Office Final Authorization -- would only lead to higher rates and overpayments. This and more has been borne out by the GAO.

GAO, in its report Payment Accuracy Rates Are Overstated, (NRD 88-10) documented the magnitude of the error rate problem. They found the error rate to be twice what SSA is reporting, with errors affecting one out of every eight beneficiaries for an average of five years, and costing the trust funds $1.1 billion a year, compared to SSA's $600 million estimate.

A main reason for the error rate difference between SSA and GAO is that SSA doesn't count underpayments. About 60% of all cases in error are underpayments, and those errors work hardships on retired workers. GAO found that over one million Social Security recipients are being shortchanged an average of $36.60 per month.

SSA staff reductions and mismanaged modernization efforts are costing over a million senior citizens on fixed incomes a bag of groceries a month. They are costing the Social Security trust funds $1.1 billion annually. And they are taking a priceless toll on the thousands of dedicated employees who sincerely want to serve this country's Social Security recipients effectively and efficiently, but are thwarted in their efforts by a meat cleaver approach to budget reduction. It seems to me that this is a senseless way to run one of the most important programs in the nation.

The passage of H.R. 791 cannot, by itself, resolve all of these very serious problems. The creation of an independent SSA, however, would be a vital first step in reversing the trend of the last eight years.

H.R. 791 would create a 3 member, bi-partisan board, serving for staggered six year terms to direct and oversee the functions of the Social Security Administration. The Board would appoint an Executive Director, who would serve as chief operating officer for the agency, for a four year term. Since 1973, SSA has had 10 Commissioners or Acting Commissioners, at least one of which was removed from office for attempting to defend the agency from the Administration's assault of staff reductions. The management structure provided in H.R. 791 would provide badly needed continuity in leadership at SSA, and help to prevent the removal of high level officials for attempting to do their jobs.

H.R. 791 would also provide the new Social Security Administration with demonstration project authority to perform certain management functions currently controlled by the Office of Personnel Management (OPM) and the General Services Administration.(GSA) The Board would have authority to test the new agency's capacity to recruit, compensate, and mange personnel, and to acquire and maintain facilities and automated

data processing equipment. We believe that language should be added to the bill to make these demonstration projects subject to collective bargaining. With that addition, we wholeheartedly support these provisions.

NTEU believes that the Federal government should decentralize its personnel practices, and give the individual agencies much of the authority for recruitment, pay, and management that is currently in the hands of OPM. The personnel demonstration projects contained in H.R. 791 would both move SSA in that direction, and if successful, serve as a government-wide example of the feasibility of decentralization.

Earlier in this testimony, we cited GAO and SSA surveys that showed low morale and frustration on the part of SSA managers and rank-and-file employees. NTEU believes that the demonstration authority provided in this legislation provides a unique opportunity for resolving these problems. Labor and management, working together toward a shared goal of service to the public, will be able to realistically address the needs of the agency and its workers and take steps to meet those needs, even within the climate of budget restraint that will continue to be a factor for years to come. NTEU would welcome the opportunity to work with the leaders of an independent SSA to address the problems of the agency in an effective, and fiscally prudent manner.

The personnel provision of H.R. 791 would also allow the SSA Board to implement innovative policies that would also improve both the agency's ability to serve its clients and employee morale and advancement. For example, for several years, NTEU has been working with SSA to revise the criteria for appointment to Administrative Law Judge (ALJ) positions, so that SSA staff attorneys in the Office of Hearings and Appeals could be promoted to these positions.

In October 1984 Congress endorsed the idea that SSA attorneys serve as ALJs, and directed the Secretary of Health and Human Services to submit a report to two Congressional committees on actions the Secretary had taken to achieve this goal (P.L. 98-460, Section 13). The original version of the legislation, which was approved by this subcommittee in the 98th Congress, would have forced OPM to appoint SSA attorneys with seven years experience in the area as ALJs. Congress chose not to force this action on OPM after OPM represented to SSA and Congress that changes in the selection criteria were made which would enable SSA attorneys to attain ALJ positions.

In the summer of 1987, for the first time since 1983, OPM solicited applications from attorneys interested in becoming ALJs. Many staff attorneys applied for the position at that time. When OPM's basic ratings of all candidates were released in March 1988, SSA attorneys and agency officials were surprised to find that OPM had not effectively revised its criteria as promised. OPM gave SSA staff attorneys, as a class, such low ratings that few will be selected as judges, despite the extensive experience in social security law many of them hold.

Many other applicants with no experience in SSA law received much higher ratings by OPM. In October 1988, the current Social Security Administrator wrote to the Director of OPM urging that the ALJ selection criteria be revised. The OPM Director refused this request.

NTEU feels strongly that Social Security claimants should have their cases reviewed by the most qualified people possible. We believe that many OHA staff attorneys have the qualifications necessary to be effective ALJ's, and that it violates both common sense and the will of Congress for OPM to unilaterally deny these attorneys the ability to advance to ALJ positions. The Board could utilize its demonstration project authority to experiment with promoting staff attorneys, and the Comptroller General, with the authority provided in H.R. 791, could review the experiment and insure that claimants receive fair treatment from these new ALJs.

The demonstration project authority allowing the SSA Board to contract for automated data processing equipment will also help to resolve some of SSA's current problems. Much of the reduction of personnel that has taken place at SSA has ostensibly been linked to office automation and systems modernization. This is in spite of the fact that those efforts have fallen greatly behind schedule, and new computer systems are being brought into severely understaffed offices with workers who can barely meet the existing workload. Little or no training has been provided to staff on the new computer systems. When new equipment is introduced it generally follows that productivity temporarily declines while training is taking place. No accommodation has been made for this, or for the fact that there is not enough time for the overworked staff to complete routine work and learn the new systems. If one entity, the Board, has authority over both personnel and systems management, we are likely to see more coordination between modernization and staffing needs. This can only improve services to the public.

NTEU believes that Section 105(b) of H.R. 791 should be amended to insure that existing collective bargaining agreements be carried over to the new agency, and not be subject to change or modification by the board during the remainder of their current terms. In both the law creating the Department of Education (PL 96-88, 20 USC 3505 (a)) and the law creating the Department of Veteran's Affairs (PL 100-527, Section II), language is included allowing changes in pre-existing agreements only in accordance with current law. This simple change will insure that the Board cannot arbitrarily alter existing agreements.

In conclusion, we believe that the passage of H.R. 791 would go a long way toward remedying the major deficiencies in SSA's ability to render responsive caring service to the public. It would also greatly enhance employee morale and pride in service. NTEU is willing to work with you in any way necessary to help insure enactment of this important legislation.

Chairman JACOBS. We appreciate the testimony. If you wish, you can be excused now.

Mr. TOBIAS. Thank you.

Chairman JACOBS. Mr. Sturdivant.

STATEMENT OF JOHN N. STURDIVANT, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY CHAPIN WILSON, LEGISLATIVE REPRESENTATIVE

Mr. STURDIVANT. Thank you, Mr. Chairman.

My remarks are quite lengthy, but I will summarize them. I would ask that without objection my entire statement be entered into the record.

Chairman JACOBS. It will be so ordered.

Mr. STURDIVANT. Mr. Chairman, members of the committee, my name is John Sturdivant. I am the president of the American Federation of Government Employees, AFL–CIO, the largest union representing Federal employees. AFGE represents the vast majority of workers within the Social Security Administration, approximately 55,000 of the agency's rapidly declining workforce.

The subject of this hearing to explore whether SSA should become an independent agency could not be more timely. The SSA is in a state of confusion and disarray. Morale among the managers and rank-and-file workers has never been lower. The agency has been politicized to a degree that would have been unthinkable just a few years ago. Staffing has plunged from a congressional appropriation of 86,213 workyears in 1985, to the fiscal year 1990 budget request level of 63,911 workyears—a difference of 22,302 workyears, or 26 percent.

And I just want to take this opportunity on behalf of AFGE to express our appreciation to Senator Pepper and to former Commissioner Ball for underscoring AFGE's continued efforts in our discussions about the staffing cuts. I think that they refer to those in their testimony.

Congress has recognized the need for more staff in each of the last 5 fiscal years and appropriated additional funds for staffing. The agency has not fully utilized them for that purpose. These staff reductions have taken place while the senior population, the beneficiaries of the programs administered by SSA, has risen by approximately 10 percent. In addition, SSA employees have been required to implement major new statutory requirements and major shifts in the way the SSA conducts its affairs. Hence, it is easy to see the significant increase in the SSA workload which is being performed by a vastly reduced workforce. In other words, they are doing more work with less employees. Efficiency in some instances, but not in this one.

The most recent General Accounting Office report, "Views of Agency Personnel on Service Quality and Staff Reductions"—GAO/HRD–89–37BR—graphically describes the seriousness of the situation. We have done one of our own independent surveys which we will soon be releasing, and the results of that survey are consistent with the findings of the General Accounting Office.

The SSA computer modernization, by and large the justification for these reductions, has been an unmitigated disaster by any reasonable measure. Both the GAO and the Congress cautioned SSA about its leap into purchasing hardware and implementing the modernization before adequate field testing of the system occurred. The "system" is not working well. It has not delivered what was promised to the Congress in the early 1980's. Congress was told that highly sophisticated and efficient hardware and software would solve the vast majority of what were SSA concerns. It has not.

The GAO has stated that by 1990 the SSA will have spent $1.1 billion, and that the sophisticated promised software systems will not be in place until the mid-1990's, if ever.

The agency has just been required to develop ways to alleviate its workload that will take the pressure off of its inadequate and malfunctioning computer system. One such attempted shortcut, the recent attempt to change the hearing regulations, may be the most outrageous example of an agency which has lost sight of its historic mission and legal responsibilities. AFGE is proud to have played a role in making the agency's plan public.

Other already implemented changes have resulted in making SSA the public's adversary rather than its advocate. Disability applicants are told to take their complicated application form home to complete. Disability reviews are not conducted timely. The "appointment system"—the walk-in public is told to leave and call in for an appointment—is used to dissuade and discourage beneficiaries and applicants.

I might say that the members of our union which serve the beneficiaries want to do their work. They want to do it well. And it continues to lower their morale and really does not give them a lot of self-esteem about being required to do these types of things.

Protective filings often are not taken; earnings are not properly posted; claims are not fully developed; and individuals becoming citizens under immigration reform will be denied retirement, survivors and disability benefits because the agency has made no effort to inform the population that there are serious problems with their earnings postings.

The need for an independent agency is apparent. AFGE has been in the forefront in bringing to this committee—and, indeed, to the Congress—the problems in the administration of SSA and their impact on applicants and beneficiaries. Our union has done this because our members are proud of the work they do, and they want to do it better for the citizens of this country and for the beneficiaries.

We have some suggestions that we will be glad to provide to the committee that we think we can make some improvements because we are concerned about some statutory rights of the employees of the agency. And we will be happy to work closely with you in your committee, Mr. Chairman, in order to make sure that those recommendations are considered.

Thank you.

[The statement of Mr. Sturdivant follows:]

STATEMENT OF JOHN N. STURDIVANT, NATIONAL PRESIDENT,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFL-CIO)

Mr. Chairman, members of the Committee, my name is John N. Sturdivant. I am President of the American Federation of Government Employees, AFL-CIO (AFGE), the largest union representing federal employees. AFGE represents the vast majority of workers within the Social Security Administration (SSA); approximately 55,000 of the agency's rapidly declining workforce.

The subject of this hearing, to explore whether SSA should become an independent agency, could not be more timely. The SSA is in a state of confusion and disarray. Morale amongst managers and rank and file workers has never been lower. The Agency has been politicized to a degree that would have been unthinkable just a few years ago. Staffing has plunged from a Congressional appropriation level of 86,213 workyears in 1985 to the FY 1990 budget request level of 63,911 workyears, a difference of 22,302 workyears, or 26 percent. And though Congress has recognized the need for more staff and has in each of the last five fiscal years appropriated additional funds for staffing, the Agency has not fully utilized them for that purpose. These staff reductions have taken place while the senior population, the beneficiaries of the programs administered by SSA, has risen by approximately 10 percent. In addition, SSA employees have been required to implement major new statutory requirements and major shifts in the way the SSA conducts its affairs. Hence, it is easy to see the significant increase in the SSA workload which is being performed by a vastly reduced workforce. The most recent General Accounting Office (GAO) report, "Views of Agency Personnel on Service Quality and Staff Reductions" (Feb. 1989 - GAO/HRO-89-37BR) graphically describes the seriousness of the situation. AFGE's soon to be released survey results are consistent with the GAO's findings.

The SSA computer modernization, by and large the justification for these staff reductions, has been an unmitigated disaster by any reasonable measure. Both the GAO and the Congress cautioned SSA about its leap into purchasing hardware and implementing the modernization before adequate field testing of the system occurred. The "System" is not working well. It has not delivered what was promised to the Congress in the early 1980's. Congress was told that highly sophisticated and efficient hardware and software would solve the vast majority of what where then SSA's concerns. The system would cost approximately $450 million and be completed by 1988. An October 3, 1988 report by the Government Operations Committee paints an ugly picture of mismanagement, failed opportunities and in fact corruption at the highest levels. The computer system has cost at least $600 million dollars to date. The SSA is about to spend another $500 million dollars during the next few years, primarily on hardware needed to compensate for poorly designed software. The GAO has stated that by 1990 the SSA will have spent $1.1. billion and that the promised sophisticated software systems will not be in place until the mid 1990's, if ever.

The Agency has thus been required to develop ways to alleviate its workload that will take the pressure of its inadequate and malfunctioning computer system. These shortcuts have been the subject of many hearings before this Committee and other Committees in the House and Senate. One such attempted shortcut, the recent attempt to change the hearing regulations, may be the most outrageous example of an agency which has lost sight of its historic mission and legal responsibilities. Potentially, millions of citizens could have been harmed if this Subcommittee and the full Committee had not acted quickly and kept SSA from implementing changes in the appeals process. AFGE is proud to have played a role in making the Agency's plan public.

Other, already implemented changes have resulted in making SSA the public's adversary rather than its advocate. Disability applicants are told to take the complicated application form home to complete; disability reviews are not conducted timely; the "appointment system," (the walk-in public is told to leave and call in for an appointment), is used to dissuade and discourage beneficiaries and applicants; SSI application and redeterminations will no longer be done face-to-face; protective filings often are not taken; earnings are not properly posted; claims are not fully developed; individuals becoming citizens under immigration reform will be denied retirement, survivors and disability benefits because the Agency has made no effort to inform the population that those are serious problems with their earnings postings. The list goes on and on.

The need for an independent agency is manifestly apparent. H.R. 791 would do much to correct the problems we describe today. AFGE has been in the forefront in bringing to this Committee, and indeed, to the Congress, the problems in the administration of SSA and their impact on applicants and beneficiaries. Our Union has done this because our members, SSA employees, care deeply about the programs that are so vital--in fact, a lifeline--to millions of our country's citizens. They have watched with dismay and concern as the programs have steadily deteriorated. Hundreds of SSA employees have signed sworn affidavits testifying to the problems in SSA. These have been submitted to Congress. At great personal and professional risk, employees have brought to the Congress' attention many of the issues which make the need for an independent agency so apparent. Through their Union, they have advocated for the protection of the program.

At the same time, AFGE, as a union, has steadfastly maintained that all federal employees should be treated equitably. To this end, it has consistently insisted that all legislative provisions pertaining to personnel embrace the concept of a civil service dependent upon merit principles. And so, AFGE's review of H.R. 791 raises several questions.

H. R. 791 clearly provides that SSA would be established as an independent agency whose function would be to administer the OASDI and SSI programs. We have supported this concept and continue to support it. Under H.R. 791, the new independent SSA would be directed by a Social Security Board consisting of three members who would have broad authority in terms of personnel management without regard to many of the provisions of the existing personnel management policies and procedures comprising the merit-based civil service system. Initially, the Board could transfer only such personnel from HHS/SSA as it so desired. What would happen to current SSA employees if they were not transferred to the new agency?

The new Board is given the same authority which now is vested in OPM to carry out demonstration projects with respect to its personnel. While it is true that AFGE has consistently supported the concept of demonstration projects, it has done so because such projects are a joint effort between the employees, the agencies involved, OPM and the Congress carried out specifically to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Under the current demonstration project authority vested in OPM, both the employees who are to be affected by a proposed project and their exclusive representatives have a meaningful opportunity to negotiate its design and implementation. Prior to implementation, a proposed project is subject to review by not only the employees and the agency but by OPM and the Congress. Thus, each demonstration project is the product of careful deliberation by many responsible persons. This process insures fairness to all who are to be affected by a demonstration project. Under H.R. 791, no such protections are provided for. Not only could all of the

employees of the new independent agency be under a demonstration project, but the Board would have no obligation to consult with the employees since the projects could be established prior to the actual transfer of the employees from HHS/SSA to the new agency. The projects would not have to be approved by OPM or any other entity. This prompts us to ask how, under the provisions of H. R. 791, would the merit principles upon which the civil service system is based be assured? What rights and protections would the employees of the new independent agency have?

Current SSA employees are endowed with the benefits of the labor-management rights provisions of Chapter 71 of Title 5. In exercising those rights, many have chosen exclusive representatives. In such cases, both SSA and the employees have benefitted from the negotiated agreements reached. The language of H.R. 791, particularly that contained in Section 105, seemingly could permit the new agency to modify or even terminate such agreements. Is there a reason why employees should suffer the loss of the benefits and protections under those agreements? Is there any reason why the exclusive representatives of the current SSA employees should not continue to represent those employees who are transferred to the new independent agency?

We commend this Committee for moving forward so quickly in this 101st Congress to establish SSA as an independent agency for all of the reasons set forth early in my testimony. It is our desire to have SSA established as an independent agency and we believe that this can be accomplished in a manner which also provides clear employee protections. Thus, we look forward to working with the Committee to develop the provisions necessary to adequately address the concerns we raised above, thereby protecting the employees of SSA and working toward assuring the integrity of the existing merit principles upon which the civil service system is founded.

Thank you for the opportunity to appear here today and to present the views of AFGE on H.R. 791. I would be happy to respond to any questions the Committee might have.

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Chairman JACOBS. We thank you for your testimony.
Judge.

STATEMENT OF RONALD G. BERNOSKI, ADMINISTRATIVE LAW JUDGE, SECRETARY, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC.

Mr. BERNOSKI. Mr. Chairman, my name is Ron Bernoski. I am an administrative law judge from Milwaukee, Wisconsin. We have submitted a written statement and request leave to amend the same.

I appear here this morning as secretary of the Association of Administrative Law Judges, together with our local representative, Mr. Peter Kyros. Our association consists of administrative law judges who are assigned to the Office of Hearings and Appeals in the Social Security Administration of the Department of Health and Human Services. In that capacity, we hear claims arising under the Social Security Act and claims arising within HCFA in the Department of Health and Human Services.

Mr. Chairman, our association does not object to H.R. 791, and we appreciate your efforts in this regard. We respectfully appear here this morning to bring to your attention the fact that this separation bill may have an adverse impact upon the administrative hearing process in each of the affected agencies. This is caused by the present organizational structure which places the hearing component of the Department of Health and Human Services, the Office of Hearings and Appeals, within the Social Security Administration; thereby, when the Social Security Administration is placed in a separate agency, it will take the hearing component with it.

This, again, raises the specter of the "dial-a-judge hearings" which HCFA proposed last term and which Congress rejected. This situation is further aggravated by the ongoing problems that judges in this agency have experienced, and which have been identified by past congressional hearings and in court decisions.

The first question we must then address is whether this separation bill will solve the problems of the judges within the Office of Hearings and Appeals. We believe that it will not. This is based upon the fact that our problems have been with and caused by the nonattorney managers in this agency who do not understand or appreciate the due process requirements placed upon us by the Federal courts, and which are expected by the American people. An independent agency does not ensure a separation of the judges from the managers and agency officials.

We next look to the solutions. Our first proposed solution is to create a Health and Human Services Review Commission which consists of three Commissioners appointed by the President. The Commission will have a review component, a Chief Judge, and corps of judges. It will have jurisdiction to hear all claims arising in the Social Security agency and in the Department of Health and Human Services. It will be cost effective, and it will save the $15 million which Dr. Roper testified would be necessary to set up the new HCFA corps, plus it will save the $5 million in annual operating costs which he proposed. It also addresses a 1981 inspector gen-

eral's report which questioned the wisdom of having the hearing component within the Social Security Administration.

Our second proposed alternative would be to establish the review commission within the proposed Social Security Board, with the Chief Judge being directly under this board. This commission would have the same jurisdiction as the first commission, together with the same power and review function.

A third alternative would be to establish the review commission under the Secretary of the Department of Health and Human Services. This commission would also have the same power and jurisdiction as the first commission I described, but the Commissioners would be appointed by the Secretary as opposed to the President.

A fourth alternative is a unified corps of administrative law judges. This bill has been introduced in the past several Congresses. It would place the judges from all agencies into a separate corps while retaining their specialty. This is a larger bill and involves more than one agency.

Now, Mr. Chairman, we believe that our first proposed review commission is the preferred solution for the following reasons: It is cost effective and will save the money's noted—$15 million up front and about $5 million annually; it responds to the objection of the 1981 inspector general's report regarding hearing fairness and questioning the wisdom of having the hearing component within the Social Security Administration. It allows an existing agency, the Office of Hearings and Appeals, to continue to function while only changing its organizational format.

Mr. Chairman, there are other similar commissions existing in the Government which are functioning well, such as OSHRC, which is a commission structure.

Mr. Chairman, we are truly interested in this hearing process and the fairness received by the American people in the administrative process. We will cooperate with you and your committee to the best of our ability.

Thank you.

[The statement of Mr Bernoski follows:]

STATEMENT ON BEHALF OF THE

ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC.

RONALD G. BERNOSKI, SECRETARY

I. INTRODUCTION

Mr. Chairman:

My name is Ronald G. Bernoski. I am an Administrative Law Judge (ALJ) assigned to the Office of Hearings and Appeals for the Social Security Administration, sitting in Milwaukee, Wisconsin.

I appear before you in my capacity as the Secretary of the Association of Administrative Law Judges which is a professional organization having the stated purpose of promoting due process hearings to those individuals seeking adjudication of controversies with the Social Security Administration and the Department of Health and Human Services.

I would like to preface my remarks by advising that the Association which I represent has taken no position with respect to H.R. 791.

My purpose in appearing before you is to alert you to a problem which will be created by passage of this Bill viz a viz the hearing process as it relates to health benefit claims and to offer possible solutions with the hearing process as it is presently configured within the Social Security Administration. The history of the ALJs in the Social Security Administration has been a long and troubled one arising largely from their being buffeted between an agency which is sometimes overzealous in reaching for expediency in the handling of cases, and the courts which have demanded fundamental fairness in the hearings process. This legislation affords a window of opportunity to address these issues so that a comprehensive remedy can be fashioned to establish a sound administrative hearing procedure which will insure due process for the individual at minimal cost to the government.

II. THE IMPACT OF THE SEPARATION OF THE SOCIAL SECURITY ADMINISTRATION FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE HEARING PROCESS RELATING TO HCFA CASES, DISABILITY CASES AND RETIREMENT CASES.

A. PROBLEMS

Presently ALJs are empowered to hear all cases within the Department of Health and Human Services which, for the most part, involve claims for benefits under the Social Security Act brought by disabled individuals and retirees, claims for benefits brought by citizens under the provisions of the Supplemental Security Income Act, and those cases arising by virtue of Medicare with its various ramifications such as the licensing of providers, claims for benefits, etc. With the separation of Social Security the Department of Health and Human Services will be without a hearings component to adjudicate controversies arising under the

purview of its retained jurisdiction, namely, HCFA cases. Allowing the Office of Hearings and Appeals to remain with HHS would, of course, create a vacuum in Social Security which presently processes several hundred thousand cases yearly which are in various stages of adjudication.

B. SOLUTIONS - OVERVIEW

1. HEALTH AND HUMAN SERVICES REVIEW COMMISSION

One solution would be to bifurcate the existing ALJ corps assigned to Social Security by creating a similar corps within HHS. This, however, lacks feasibility on several scores. The overwhelming percentage of cases fall within the purview of Social Security legislation; claims arising under HHS consist of a relatively small part of the over-all case load. Moreover, the concept of creating a new corps of ALJs to hear HCFA cases was attempted in the last Congress. The attempt failed because telephone hearings were suggested as an expedient method to adjudicate these cases - this generated a good deal of political opposition from various groups concerned with the fair treatment of the elderly. In addition, Dr. Roper, Director of HCFA, suggested that the start-up costs for such a corps was estimated to range in the area of some fifteen million dollars and an annual budget of some $5 million. In short, it was neither politically nor economically feasible to alter the present system of hearings under the Administrative Procedures Act (APA) before ALJs assigned to Social Security. It is suggested that the optimum benefit and most cost effective solution would be to leave intact the existing corps of ALJs who are most familiar with the laws governing all cases arising under HHS. In order to accomplish this, the present corps of ALJs assigned to Social Security are in position to do the work by assimilating these judges into a Health and Human Services Review Commission under the legislation proposed by Congressman Moody. This concept has been articulated in the proposal herein referred to as the "Moody Bill." The Commission would be structured as follows: the president would appoint a Commission composed of three members with the advice and consent of the Senate. The chairman of the Commission would be empowered to appoint ALJs to a corps. The Bill defines the jurisdiction of ALJs which would include all cases presently heard by HHS, both cases arising under Medicare and Titles II and XVI. The corps of ALJs would be essentially structured in its present form with a Chief ALJ and various ALJs to assume administrative responsibilities in each of the deployed hearing sites. An appellate level of judges would be selected from among those presently sitting to review appeals from adverse decisions at the hearing level. Scrupulous attention has been given to incorporate the constraints and provisions of the Administrative Procedure Act (APA), Title 5, United States Code, Sections 554, 556, and 557, including a hearing process for removal of recalcitrant ALJs.

2. COMMISSION WITHIN THE SOCIAL SECURITY BOARD

This concept differs from the forgoing in that the ALJ corps would be placed within the Social Security Board which would be created by passage of H.R. 971. The appointment of board members is similar to appointments of commissioners under the "Moody Bill," and would perform the functions and have the powers of the Review Commission.

3. COMMISSION UNDER THE SECRETARY OF DEPARTMENT OF HEALTH AND HUMAN SERVICES

Another approach would be to provide that the Secretary of HHS would appoint the Review Commission to oversee the work of the Hearings component.

4. UNIFIED CORPS OF ADMINISTRATIVE LAW JUDGES

Perhaps the ultimate solution would be to create a separate corps of ALJs which would be given jurisdiction over all administrative hearings, not unlike the judicial structure found in U.S. District Courts and most State Courts. This concept would envision specialty by assignment to the various agencies utilizing ALJs in APA hearings. It would provide greater flexibility to best serve the needs of those agencies requiring ALJs now in place or emerging, i.e.: Department of Housing and Urban Development and the Department of Immigration and Naturalization.

III. THE NEED FOR REFORM IN THE ADMINISTRATIVE HEARINGS PROCESS

The fundamental, overriding problem in the Office of Hearings and Appeals, Social Security Administration, has been, and unless addressed now, will continue to be that the responsibility and accountability for the entire hearing and decisional process is placed upon the individual ALJ, yet the judges themselves are given no authority to carry out this mandate. Instead, authority for case control, resource improvement and management, quality control, hiring of personnel (including staff attorneys who assist the ALJs in preparing draft decisions), etc. is given to an ever-enlarging group of non-legally trained bureaucrats who have no understanding of the concepts embodied in the Administrative Procedure Act or the concept of administrative due process in general. The longstanding conflict and controversy within the Office of Hearings and Appeals caused by the housing of the ALJs within the Social Security Administration itself is well-documented. Congressional hearings in 1975, 1979, 1981, 1983, and as recently as November, 1988 clearly have established that the problems are systemic. The Hearings have clearly demonstrated that the agency lacks an appreciation for the role of Administrative Law Judges as independent decision makers within the agency

and that the agency fails to respect the dignity of the role of Administrative Law Judges.

The impedance of the power and authorities of the individual ALJs to control the manner and methods by which they hold hearings and render decisions, and a usurping of that power by the Social Security Administration and its managers has prevented the judges from carrying out their functions. In spite of the fact that the Administration has repeatedly paid lip service to the concept of a "quality" decisional process, the constant assurances made by the Administration have never come to fruition. On the contrary, there has been a consistent trend to establish and superimpose layer upon layer of managerial personnel upon the ALJs and a concurrent reduction in the number of employees who are actually charged with doing the work. To further aggravate the matter, the agency has asserted the need to "pool staff" in order to reduce the number of employees required to do the work cut budgets, etc., to such a manner and extent that the judges have absolutely no effective control over the manner and method in which the work is performed, at the same time the number of non-productive "managers" increases. This policy, rather than insuring that the judges can effectively carry out their mission, instead unfairly restricts the judges in the performance of their functions and has subjected them to criticism, or possible disciplinary action.

This history of the problems in the hearings and appeals process in the Office of Hearings and Appeals is well-documented in previous Congressional Hearings held in 1979, 1981, and 1983. This history, that is all too well established, shows that over-management, "micro-management," and mismanagement of an appeals process by over-reaching administration bureaucrats, has threatened the fairness of the system time and again.

In 1976, a commissioner of Social Security made it clear that he would like to do away with the Administrative Law Judge appeals process because the judges had strayed too far and become too independent. In 1980, a transition report, prepared for the Reagan Administration, recommended the gradual elimination of the appeals process and the judges, replacing them with non-judge agency employees who would be more responsive to the direction of the agency. In 1983 pressures by management officials of the agency on individual judges was recognized in reports of the Senate Subcommittee on Oversight of Government Management. This subcommittee found that the Secretary's focus on allowance rates in the Bellmon Review Program resulted in less impartial and fair hearings for some disability claimants. That same year, the Administrative Law Judges in Social Security had to bring legal suit to reform action of over-reaching agency officials who attempted to, and did, interfere with the decisional independence of the judges in the Office of Hearings and Appeals. In Association of Administrative Law Judges, Inc. v. Heckler, 594 F. Supp. 1132 (D.C. D.C. 1984), the court held that the Office of Hearings and Appeals' ulterior motive was to reduce ALJ allowance rates

and that ALJs in the Social Security Administration could reasonably feel pressured and issue fewer allowance decisions and that as a matter of common sense, pressure may have intruded upon the fact-finding process and may have influenced some outcomes.

It should also be noted that even the Department of Health and Human Services has questioned the wisdom of having the judge employed by the same agency whose cases they decide. In a May, 1981 management oversight review report on the Office of Hearings and Appeals and the Social Security Administration, the Office of Inspector General found that the appeals process could be more effectively located outside the Social Security Administration. The report highlighted the appearance of impropriety and the incongruity in having one arm of the Social Security Administration making the basic eligibility determinations in cases while the Office of Hearings and Appeals arm of the Social Security Administration adjudicates that decision. It went on to question the wisdom of the arrangement of putting the Office of Hearings and Appeals under the direction of an Associate Commissioner because the Social Security Administration staff controls the resources, space, equipment and supplies of the Office of Hearings and Appeals which, if restricted, could indirectly control the number and quality of the hearings held.

The Bill under consideration by this Committee does not address these problems. The appeals system needs to be made more respectable and credible. This need is made all the more critical when one considers the nature of the cases heard by these ALJs. The citizens seeking disability, old age and retirement benefits, Supplemental Security Income and controversies involving Medicare, are entitled to fair hearings and required to have them governed both by the mandates of the APA and Supreme Court decisions which define the concept of due process as it applies to Administrative Law. The APA enacted in 1946 perceived that the decisional independence provided for ALJs and the protective provisions of that legislation would permit the retention of the appeal system within the agency and adequately safeguard the decisional independence of the ALJ. History has proven that this is not the case. ALJs cannot serve justice and at the same time be subjected to the employment pressures, management directions, and policy dictates of their employer, in this case either the Social Security Administration or the Department of Health and Human Services. Pressures on the judges to issue more and more decisions, hear more and more cases, take short cuts, write boiler-plate decisions, and deny meritorious claims by agency managers, are all examples which have done much to erode the respectability and credibility of the system. As long as ALJs are employed by the agencies that appear before them, their independence is suspect, and the ability of an agency to exert improper influence over them is ever-threatening.

The judges themselves have steadfastly resisted such pressures, to the point of challenging the legality of their agency's actions in many of these areas by bringing litigation in the

courts to reform the transgressions of the agency. However, litigation can never lead to an appropriate, long-term solution. Rather, the solution lies in removing the judges from the employment of either of the agencies. They should be placed in an independent review commission as proposed by Congressman Moody. Precedents presently exist for such an approach. Independent review commissions for ALJs in other agencies, such as OSHA, work well. The judges have for many years urged legislative action for such separation and sincerely believe that in this manner the credibility and fairness of the hearings and appeals process can best be served. Justice is ultimately the judges' goal and function. They should and must be, once and for all, in charge of that function. This can only be accomplished by separating the judges from the managers and agency officials. If this is not done now, in connection herewith, we will be forced to come back again and again to this subcommittee and others in Congress, as we have done in the past, to agonize over the continuing problems in administrative law.

We believe that the Bill proposed by Congressman Moody to establish an independent Health and Human Services Administrative Law Appeals Commission solves many of the problems I have enumerated. Because this would be an independent commission, apart from either the separated Social Security Administration or the Department of Health and Human Services, the commission could, with very little, if any, restructuring of the current offices and physical facilities and personnel handle both the cases involving Social Security benefits and disputes under Medicare (HCFA cases). The Administrative Law Appeals Commission proposed in the Moody Bill has an additional cost-savings advantage. Under this alternative, the mechanism is already in place to hear and decide both Social Security cases and cases arising from HCFA. Very little change in the structure of the existing offices and physical facilities currently in place is necessary. However, if the commission is placed under the new Social Security Administration Agency, a new bureaucracy must be created to handle the HCFA cases. If the commission remains under the control of the Department of Health and Human Services, additional procedures and restructuring will be necessary to allow ALJs to hear Social Security cases. However, under the Moody Bill, as a separate and independent Health and Human Services Appeals Commission, ALJs could, as they do now, hold hearings and issue decisions for both agencies in all cases.

As previously noted, the cost of setting up another Office of Hearings and Appeals for either the Department of Health and Human Services or the Social Security Administration, once the agencies have been separated, would involve approximately $15 to $20 million dollars. In addition, it is estimated that the annual cost of running additional hearing offices to hear either the Social Security cases or the HCVA cases is approximately $5 million dollars. Under the Moody Bill, the judges currently in the Office of Hearings and Appeals of the Social Security Administration, would be automatically placed into the independent

Health and Human Services Administrative Law Appeals Commission and would be empowered to hear both Medicare cases and Social Security cases and any other cases arising under the Department of Health and Human Service. There would be no need to create a second additional panel of judges to hear either one type of case or the other.

Another potential source of savings in establishing an independent commission apart from either agency involves reduction in the managerial staff for Administrative Law Judges by eliminating the managers and the layers upon layers of managerial personnel in the Office of Hearings and Appeals that are currently unnecessary. Therefore, we consider that the Moody Bill which provides for an independent Appeals Commission apart from either agency to be superior to any plan which allows for the commission to be within the hierarchy of either an independent Social Security Administration Agency or the Department of Health and Human Services.

Beyond cost and financial concerns, the alternatives of placing the commission under one agency or the other leaves the potential for continued threat to the decisional independence of Administrative Law Judges. There is nothing to prevent either the Secretary of the Department of Health and Human Services, if the commission remains with the Department of Health and Human Services, or the Social Security Board and its executive director, as proposed in this Bill, to superimpose another layer of bureaucratic managers upon a corps of ALJs. Without doubt, the same problems, conflicts and controversies that currently exist between the Department of Health and Human Services ALJs and managers in the Social Security Administration, could and would continue.

In past sessions of Congress, Senator Howell Heflin has introduced the Administrative Law Judge Corps Act to remedy the basic incongruency inherent in the present administrative adjudicatory system's structure -- the employer-employee relationship of federal agencies and "their" ALJs. It is our understanding that Senator Heflin intends to introduce this Bill in the current session of Congress. To the extent that the Heflin Bill would provide that Social Security Administrative Law Judges would become part of this independent corps of all ALJs of all agencies, we would also support that legislation, as it too would guarantee the decisional independence of Social Security ALJs and allow said judges to hear and decide cases from both the independent Social Security Administration and the Department of Health and Human Services, together with other agencies. If the Heflin Bill were to become law, many of the problems I have addressed would also be solved. However, the Moody Bill addresses a problem that is somewhat unique to the Social Security Administration and the Department of Health and Human Services that needs to be remedied now. We do not feel that the Heflin Bill and the Moody Bill are in any way conflicting. The legislation proposed by Senator Heflin, rather, provides for an independent corps of Administrative Law Judges in all agencies, including the Social Security Administration.

Association of Administrative
Law Judges, Inc.

Ronald G. Bernoski

Leonard E. Balcun
President,
By Ronald G. Bernoski, Secretary

Chairman JACOBS. Thank you for your testimony.

Mr. Moody.

Mr. MOODY. Thank you, Mr. Chairman; and I certainly want to welcome my constituent from Milwaukee to town. He has worked hard on this proposal of an independent ALJ commission. And I must say it has a great deal of merit.

Judge, could you tell us a little bit more about the pressure you and your colleagues were under in the period we have been describing in this room this morning, about the 1981, 1982, 1983 period?

Mr. BERNOSKI. Correct. During that time frame, there were several different pressures—types of pressures—that were brought to bear upon administrative law judges.

One of the types of pressure was a so-called Bellmon review type pressure, which was a system whereby certain judges were, "targeted," by the administration. And those were the judges who had the high reversal rates and the triggering mechanism where judges that were reversing or paying more than 70-percent of the claims that had been denied by the State agency.

Mr. MOODY. But what fear were they under; what was the pressure on them?

Mr. BERNOSKI. Well, the pressure at that time, as came out in a subsequent lawsuit in a transcript from Lou Hayes, who was then an Associate Commissioner in the Social Security Administration, is that there was a "policy," that was enacted to, I guess, "reeducate" these judges; and several of them were brought into or brought back to Washington for a reeducation process.

Also, in the testimony that was brought out, there was a plan to discipline these judges. Now, that never was brought about specifically, because Lou Hayes left that job, I think, before that plan was implemented.

Also, it is interesting to note——

Mr. MOODY. That was in the atmosphere?

Mr. BERNOSKI. Yes. Yes, sir.

Mr. MOODY. There was a plan to possibly discipline judges who had too high a rate of reversal of the lower findings?

Mr. BERNOSKI. Yes, sir. And also, just to finish that thought, also in a lawsuit the Judges Association subsequently commenced against the administration regarding the Bellmon review, Judge Greene, who is a Federal district court judge here in the District of Columbia, found that the Bellmon review had a disquieting—I cannot recall the exact terms—but had a disquieting effect or had a pressuring impact upon the administrative law judges.

And, in fact, our association has been awarded attorney's fees under the EAJA, under the Equal Access to Justice Act, in the sum of $156,000—which the Government paid for our attorney in that proceeding.

I don't mean to beleaguer it, but a second aspect of this was the process of the agency to actually discipline judges who are not handling a sufficient number of cases. And this was Goodman—two judges; one was Goodman, and the other was Balaban—both of these gentlemen had actions brought against them by the Merit Systems Protection Board.

In the Goodman case, which was the prime case which really resolved both issues, the agency did not say that there was anything

wrong with his decisional competence. He was writing good decisions. He was a good judge. He just was not producing enough of them. Judge Goodman, who has since retired, in fact did prevail; as did Judge Balaban, whose case followed. And they both were also awarded their attorney's fees, which were in the excess of, I believe, somewhere between $50,000 and $100,000.

But the question here is, Mr. Moody and Mr. Chairman, is that these people, these two judges, were required to really put their personal fortunes—their personal resources—at stake at those particular occasions.

I mean, those were substantial amounts of money for people of not really substantial means.

Mr. MOODY. Do you think that they were pressured in this way or put at risk this way because they were being too, quote, generous, unquote, in their findings—in their decisions?

Mr. BERNOSKI. There are two basic thrusts here. The first thrust was the Bellmon review, which is the too generous; and the other is the Balban-Goodman, where there is not enough decisions. Those are two separate concepts that were—where pressure was being placed upon judges at that particular time.

Right now—also—well, this is also exemplified in the—there was an interesting court decision in the Minnesota mental health case in which the Federal district judge up in Minneapolis reversed a whole class of actions and, in fact, praised the administrative law judges for the high reversals of these cases.

In other words, we were stepping into that breach and protecting these people who were, at that time, being improperly ceased. And that is the program that you are talking about. At that time, as a matter of fact, a doctor from the State agency appeared and there is part of that testimony of that record that they were reviewing these cases based on the person requiring to meet the medical listings, which would, in the opinion of this doctor, these people would have had to have been psychotic to meet the test which is a far more strict test than what is required to obtain disability under the standards established by Congress.

Chairman JACOBS. Mr. Sturdivant may have a comment.

Mr. STURDIVANT. Yes, Mr. Chairman, the judge—his situation about judges not processing enough cases—brought to mind a problem that we have experienced. And so far, none of our people have been brought back for reeducation.

But anyway, we have a situation, say, in our payment centers and also our field offices; under the decreased staffing in the agency and, of course, we know that the work load has increased—the computers are not meeting that need.

So we have a situation where our reviewers are being severely evaluated on the number of cases they process. Now, as you well know, these are not widgets; these are people. And one case might necessarily be more complex than the other case.

But under the performance standards that are in place in these situations, there is no differentiation. It is simply the number of cases you process in a given amount of time; which means that in some instances, we have severely complex cases. Nobody wants to touch them, quite frankly, because they are more time consuming

and they don't add to the reviewer's quota under the performance system.

So once again, this is a problem where the working conditions and the decreased staffing is affecting the service that we provide to the beneficiaries. And this is something we certainly have talked about before and we will be happy to continue to look into.

We have a survey that we have done among our people that we will be releasing and we would certainly work with you to expand upon that.

Mr. BERNOSKI. May I just add upon that? I agree with this gentleman's comment completely, because some of the staff people in our agency in the hearing component have the same problem. What is happening now is that there is an overload of work, I think, because of many things, the aging of society—a cutting of people we are dealing with.

It is very difficult. They are not fungible goods. Secondly, the quota system that this gentleman mentioned is also very germane to the staff attorney problem which Mr. Tobias mentioned who was sitting next to me—a few minutes ago.

These people are also placed under this quota system, and they have the same problem. They have—the larger cases, of course are put aside—because they take more time. This is simply not the way this program should be operated, in our opinion. And we have—and our association has—taken a position against these quotas and numbers, especially on the staff attorneys.

We do not feel it is professional. We do not feel it is proper. We do not feel it is the way to get a quality product. Now, I understand that when you are running a program, there has to be cost effectiveness. We are not against that, of course. We are all taxpayers. But there has to be some reasonableness, and we have tc turn out a product that protects the rights of the people. After all, that is what we are dealing with. We are dealing with people at our level.

Mr. MOODY. Judge, let me ask you. You are interested for the reasons you have been giving us in seeing an independent ALJ system set up. If that is not possible but, in fact, the independent agency bill passes—the one we have been considering today—would that alleviate some of the problem?

Mr. BERNOSKI. Mr. Moody, it is our opinion that it would not; because one of the problems that I perceive with the hearing system that we have today is that it still would not eliminate the problem which I referred to. Our problem is with the nonattorney managers who are controlling our process, who really do not understand, in our opinion, the niceties and the subtleties of the legal system.

One of the problems that I perceive is that under the Social Security Act, we are mandated to hear these cases for the Secretary. Now, I think that somehow the system got perverted and we are buried down into the Social Security Administration. I think that is part of our problem.

We are in the Social Security Administration. Our system should be elevated. We are actually right now—we are hearing cases for the Secretary. We should have a chief judge that reports to the Secretary. And not through Mr. Enoff's chain, the Bureau of Plans and Operations—I don't know if that is the exact title—or through Baltimore.

And if you just move our function over to the independent agency and we are buried down into that system, that is not going to solve the problem. The solution is to get us up reporting to the person responsible for—that we are actually working for.

Mr. MOODY. So it is not just the political agenda that might prevail at the White House level that has been pressuring you. It also has been that you have been under nonattorney managers who are not trained in the due process philosophy. You have been under quotas and finally—and perhaps even more importantly—your role is that of a court of last resort for reporting to the Secretary, whoever is the top person. All of those three problems would not particularly be alleviated if you simply severed SSA from HHS; is that what you are saying?

Mr. BERNOSKI. Correct. Yes, sir, Mr. Moody. I think it was Mr. Ball or one of the previous speakers, in response to your question, objected to the Commission to the extent that he felt the Commission would be a policy setting agency and it would not be acting according to dictates of the Commissioner.

With all respect with his opinion, that is not the intent of that bill. The intent of that legislation, Mr. Chairman, is to leave the policymaking capacity with the Secretary or the board under the new system. We do not intend to do that. That is not our function. Our function is to adjudicate the claims according to the law; that is, according to the law that is set and established by Congress, the policy established by the agency and the policy statements—their rulings—and the applicable court decisions.

We are not interested in setting policy or operating the Social Security Administration. That is not our role.

Mr. MOODY. So you have some recommendations that you would like to see implemented. Even if we go to the independent agency, you would still like to see some of the changes mentioned within that context?

Mr. BERNOSKI. Yes, sir. Yes, sir. And we believe that the Review Commission is the best concept; because there are other commissions which are functioning, primarily OSHRC, which this is patterned after to a large extent—which is in place and is functioning well.

And it also would allow us to hear the HCFA cases and the Social Security cases; so to that extent, it would be cost effective. And I think it answers the problems.

Mr. MOODY. Thank you very much.

Chairman JACOBS. Judge, did some ALJ's actually go to Washington for these sessions. Pin that down for me a little bit.

Mr. BERNOSKI. Mr. Commissioner—Mr. Secretary—Chairman—I am sorry. I am trying to think and talk at the same time. I am not sure about that. I am not sure. I know that they were summoned; whether they actually made the trip or not, I am not certain.

Chairman JACOBS. Well, what is your point of reference?

Mr. BERNOSKI. This came out in the testimony in the case that I had referred to, the *Association* versus—the *Association* v. *Heckler*—and this is part of the testimony, the transcript of the proceedings and the depositions.

Chairman JACOBS. And in that transcript is some individual in the administration identified who either advocated or enunciated such a policy?

Mr. BERNOSKI. At that time, Mr. Chairman, Lou Hayes—as I indicated—was in charge of the program.

Chairman JACOBS. And the sworn testimony is that that person either proposed or actually implemented a policy of so-called reeducation?

Mr. BERNOSKI. Correct. I don't think he made the phone calls; but since he was in charge of the——

Chairman JACOBS. Well, was that supposed to be done in camps?

Mr. BERNOSKI. No, sir.

Chairman JACOBS. Not in Southeast Asia. [Laughter.]

Mr. BERNOSKI. No, sir. I think it was going to be done here in Washington.

Chairman JACOBS. Thank you very much.

Mr. BERNOSKI. Yes, thank you, sir.

Chairman JACOBS. Mr. Sturdivant.

Mr. STURDIVANT. Yes, sir.

Chairman JACOBS. You made some reference, I believe, to employees rights under the new system, if it should become law. I assume by that you mean preservation of existing rights?

Mr. STURDIVANT. Yes, sir. As we review the bill, we continue to be concerned about whether or not Merit System principles would still apply. And, of course, we would want them to apply. But as we reviewed the bill, it seemed we don't know—it does not seem that they are explicitly reiterated.

Chairman JACOBS. Well, we would be happy to hear from you and Mr. Wilson with greater specificity as to what might trouble you; because I am sure it would be the intent of Congress that existing rights be preserved.

Mr. STURDIVANT. Yes. We would be eager to work with you and your staff to present some suggestions that would make sure that the merit staffing be preserved, employee rights be preserved and, of course, other rights that we have been entitled to, which we believe that has enabled us to do the type of job that we want to do on behalf of the beneficiaries are preserved.

Chairman JACOBS. Right. The committee thanks the gentlemen for the testimony; and I note the presence of our former colleague, Peter Kyros. I am pleased that he is here as well.

Mr. STURDIVANT. Thank you, Mr. Chairman.

Mr. BERNOSKI. Thank you for the opportunity to be here.

Chairman JACOBS. Our next witness is Mr. Lessard, representing the National Committee To Preserve Social Security and Medicare.

STATEMENT OF WILLIAM J. LESSARD, JR., DIRECTOR OF POLICY AND RESEARCH, NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE

Mr. LESSARD. Thank you, Mr. Chairman. I am William J. Lessard, Jr., director of policy and research for the National Committee To Preserve Social Security and Medicare.

The National Committee represents millions of senior citizens concerned about the independence of Social Security. The number

1 item on the National Committee's legislative plan for the 101st Congress is to make Social Security an independent agency and the National Committee supports in broad principle the objectives of your legislation, H.R. 791.

It is our conviction that a return of Social Security to independent status would remove the agency a step from the political pressures that have lessened the agency's effectiveness and undermined public confidence in the agency's integrity.

Social Security should be managed solely in the interest of American workers, just as this Congress rightly demands of private pension programs. Currently, the right of active and retired workers and their families to an equitable and well-managed retirement income program is being subordinated to the interests of the Office of Management and Budget.

OMB is interested in reducing Social Security outlays in order to hide general revenue deficits. For example, Social Security trust funds are more than adequate for cost-of-living adjustments. Yet nearly every year, COLA's are either on the table or threatened. Trust fund levels can afford adequate staffing; but every year staffing is reduced, and to the detriment of the people the Social Security Administration is supposed to serve.

Because management is interested primarily in the bottom line, the Social Security Administration opposes correcting the notch, fails to recommend improvements in other areas where benefits are inequitable, and continues to cut administrative corners, such as the failure to reconcile earnings in a timely manner.

Survey after survey shows that both young and old Americans strongly support Social Security; but the lack of continuity in political direction and leadership over much of the past 15 years has made both young and old fearful for the future. Current fears and misconceptions will be overcome only when responsibility for Social Security and supplementary security income is placed in the hands of a bipartisan board committed to the program and given full authority to select and employ an executive to administer the agency.

An independent board whose primary commitment is to workers and retirees would have both the authority and the forum for stimulating public debate for changes where proposed. Board members, appointed for set terms and representing both parties, would be free to defend Social Security and ideological excesses and unwarranted attacks, whether from the right or the left.

And board members could insure that the executive, employed to administer the agency, devotes his or her effort full-time to professional program administration rather than divisive partisan political activities.

A Social Security board should be given full authority for management of the old age survivors and disability insurance trust funds. If all investment decisions are made by the board, public confidence in the integrity of the trust funds will be enhanced and there will be no repetition of the 1985 trust funds disinvestment.

There is, in our view, no need for additional trustees beyond the members of the Social Security board.

Mr. Chairman, we are pleased that your bill, as well as several other House and Senate independent agency bills, would create an

office of beneficiary ombudsman. The National Committee also supports the inclusion of a beneficiary bill of rights.

We would anticipate that virtually the entire structure of the existing agency would be needed in an independent agency, and all of the beneficiary protections in current law, such as the appeals process, would be continued. We would also expect an independent agency to honor existing labor/management relationships.

Rank and file employees and AFGE have been a bulwark against service deterioration.

While establishing Social Security as an independent agency will go a long way to providing today's workers and retirees with security, it is also necessary for Congress to take the Social Security trust funds out of the unified budget and all deficit reduction targets to truly ensure Social Security's independence.

Thank you, Mr. Chairman.

[The statement of Mr. Lessard follows:]

STATEMENT OF WILLIAM J. LESSARD, JR., DIRECTOR OF POLICY AND RESEARCH, NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE

I am William J. Lessard, Jr., Director of Policy and Research for the National Committee to Preserve Social Security and Medicare.

The National Committee endorses the concept of an independent agency and supports in broad principle your legislation, H. R. 791, Mr. Chairman. The agenda in the National Committee's Legislative Plan for the 101st Congress begins: "**Management of the Social Security Administration must be returned to professionals, capable individuals insulated from ideological and political pressures which undermine the public's confidence in the system and threaten the agency's integrity.**" It is our conviction that a return of Social Security to independent status would remove the agency a step from the political pressures that have lessened the agency's effectiveness and undermined public confidence in the agency's integrity.

Social Security should be managed solely in the interest of American workers, just as this Congress rightly demands of private pension programs. Currently the right of workers, retirees, dependents and survivors to an equitable and well-managed retirement income program is being subordinated to the interests of the Office of Management and Budget in reducing Social Security outlays in order to hide general revenue deficits. For example, Social Security Trust Funds are more than adequate for cost of living adjustments, yet every year COLAs are either on the table or threatened. Trust Funds levels can afford adequate staffing, but every year staffing is reduced -- and to the detriment of the people the Social Security Administration is supposed to serve.

Because management is interested primarily in the bottom line, the Social Security Administration opposes correcting the Notch, fails to recommend improvements in other areas where benefits are inequitable and continues to cut administrative corners, such as the failure to reconcile earnings in a timely manner. As a result of indiscriminate staffing cuts, there are poor morale and rapid turnover of staff, inadequate training of new claims and service representatives, deficient and inaccurate telephone service, questionable office relocations, closings or downgradings, and a cutback if not actual abandonment of outreach to impoverished individuals who would be eligible for SSI if they only knew how to apply.

Survey after survey shows that both young and old Americans strongly believe in Social Security. But the lack of continuity in political direction and leadership over much of the past fifteen years has made both young and old fearful for the future of Social Security. Current fears and misconceptions will be overcome only when responsibility for Social Security and Supplementary Security Income is placed in the hands of a bipartisan board committed to the program and given full authority to select and employ an executive to administer the agency in accordance with the board's directives.

Equally important, board meetings conducted in public will result in policy decisions and suggestions for program modifications which take into consideration the views and desires of America's workers to whom Social Security rightly belongs. No longer would recommendations for major modifications arise unexpectedly from ideological wellsprings, such as the 1981 Administration proposal for a 26 percent benefit cut.

An independent board whose primary commitment is to workers and retirees would have both the authority and the forum for stimulating public debate before changes were proposed. Board members appointed for set terms would be free to defend Social Security from ideological excesses and unwarranted attacks whether from the right or the left. And board members could assure that the executive, employed to administer the agency, devotes

his or her effort full-time to professional program administration, rather than to divisive partisan political activities.

A Social Security Board should be given full authority for management of the Old Age, Survivors and Disability Insurance Trust Funds. If all investment decisions are made by the board, public confidence in the integrity of the trust funds will be enhanced and there will be no repetition of the 1985 trust funds disinvestment. There is, in our view, no need for additional trustees beyond the members of the Social Security Board. While the Secretary of the Treasury will continue to manage the money, he or she would no longer need to be a trustee. We also believe that your legislation outlines responsibilities for the Secretary of Health and Human Services which should be the prerogative of the Social Security Board.

The National Committee has no position on the appropriate number of members of the Social Security Board or on the length of their terms. The key element of this legislation is the protection of Social Security, not the size or tenure of the board. We would only urge Subcommittee members to reflect carefully on the potential risk to stability and continuity if terms of service are too short or if a the board were to suffer the loss of more than one member at a time.

Mr. Chairman, we are particularly pleased that your bill, as well as several other House and Senate independent agency bills, would create an office of Beneficiary Ombudsman. Social Security beneficiaries must have someone to whom they can take problems and concerns when they feel they have been wronged or are dissatisfied with the service received. The National Committee also supports the inclusion of a Beneficiary Bill of Rights. This provision will alleviate existing concerns and increase the trust of workers and beneficiaries in the continuation of the Social Security program.

With regard to other officers, we take no position on how many should be specifically mandated by the authorizing legislation. We would anticipate that virtually the entire structure of the existing agency would be needed in an independent agency and that all of the beneficiary protections in current law, such as the appeal process, would be continued. We would also expect an independent agency to honor existing labor-management agreements. Rank and file employees and AFGE, in most instances, have been the only bulwark against service deterioration. Their loyalty and dedication should not be repaid by disenfranchising them in the new agency.

We recognize, Mr. Chairman, that you have chosen to specifically limit today's discussion to the concept of establishing Social Security as an independent agency. That agency, however, can never be truly independent nor can benefits of future retirees be secure until Social Security Trust Funds are out of the unified budget and the general operating budget is balanced without consideration of annual Social Security surpluses.

Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Lessard, how would you distinguish a beneficiary's bill of rights from simply the existing law, which I take it is there to enunciate beneficiary's rights?

Mr. LESSARD. The existing law is there to describe how benefits will be paid and earned. Several other independent agency pieces of legislation have a beneficiary bill of rights; and I think it would articulate and be important in terms of political support, both of workers and beneficiaries, that there was some clear statement of purpose.

In 1985, when the Secretary disinvested the trust funds, there was—seemed to be—a clear understanding in the law that that was inappropriate.

Chairman JACOBS. When I think of the beneficiary's bill of rights, I think more of individuals than a macro decision like that. I am just trying to figure this out.

If the formula is set out in the law, you made the 40 quarters, et cetera——

Mr. LESSARD. Yes.

Chairman JACOBS [continuing]. And you apply the formula, is that not a sufficient bill of rights?

Mr. LESSARD. Well, one of the concerns in terms of deterioration in service and the decline in quality is that there has really been no clear standards of what service ought to be provided beneficiaries, and that is part of the problem of measuring whether Social Security service has indeed declined like we believe.

We believe that a beneficiary bill of rights would spell out some of those issues of service to the beneficiaries.

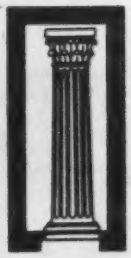
Chairman JACOBS. In other words, apart from the amount that you have coming, when you finally get to the decision—on the way to the decision—how many times should the phone ring and how long should you be put on hold and things like that; is that what you are talking about?

Mr. LESSARD. Probably not in detail how many times the phone should ring, but things like that. And recently, the last Congress passed a bill of rights for IRS taxpayers; and I think that there is the same—a similar—need for Social Security beneficiaries and workers.

Chairman JACOBS. Have you specific suggestions about the so-called bill of rights to share with us?

Mr. LESSARD. We will share that with you, Mr. Chairman.

[The following was subsequently received:]



NATIONAL COMMITTEE TO PRESERVE
SOCIAL SECURITY AND MEDICARE

2000 K Street, N.W., Suite 800, Washington, D.C. 20006 (202) 822-9459

March 20, 1989

The Honorable Andy Jacobs
Chairman
Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jacobs:

In response to your request for specific suggestions about a Social Security Beneficiary Bill of Rights, we are submitting the following for inclusion in the record of the March 1 hearing on Establishing Social Security as an Independent Agency.

The primacy of rights of workers and beneficiaries should be inherent in the Social Security Act, but administration of Social Security in recent years suggests that a statement of rights of workers and beneficiaries is warranted. Rather than suggest specific language, we would like to offer a set of principles to guide the members of your Subcommittee in drafting appropriate legislation.

Information provided to the Social Security Administration will not be released to unauthorized parties.

The proliferation of the use of Social Security account numbers as identifiers for public and private purposes threatens the security of Social Security records. Information from Social Security records should not be divulged to other individuals, outside interests or other Federal, State or local agencies, except as provided by law, without the written consent of the number holder or a legal representative of the number holder. Under no circumstances, should the Social Security Administration sell, exchange, verify or otherwise release information from Social Security records to commercial interests without the written consent of the Social Security account number holder.

Individuals conducting business with the Social Security Administration are entitled to privacy.

Adequate space and appropriate sound barriers are not now provided when beneficiaries are interviewed by claims and service representatives so as to insure the confidentiality of conversations.

Claims and service representatives faced with heavy workloads have been known to conduct group interviews during which participants are asked and expected to answer questions of a personal nature in the presence of other members of the group. Examples are group interviews for the purpose of outlining disability benefit criteria or verifying continued SSI eligibility.

Individuals inquiring as to benefit eligibility or otherwise conducting business with the Social Security Administration, whether in person or by telephone, are entitled to a record of contact containing, at a minimum, a summary of the business transacted and the identity of the Social Security representative by whom they were assisted.

Inadequate training and/or too frequent employee turnover has resulted in inaccurate information being provided to claimants by inexperienced representatives. Months and even years of benefits can be lost if a claimant relies on the information provided and does not insist on filing a claim. A written record of the inquiry and response would entitle the claimant to retroactive benefits when the error was subsequently detected. The record of contact would also permit the Social Security Administration to identify the source and frequency of erroneous responses and to take corrective action.

A written record of contact with a confirmation mailed to callers is particularly essential for telephone service. Communication which is not face to face, deprives the service representative of the opportunity to observe reactions of the questioner to be sure information provided is understood. A record of a telephone contact questioning eligibility for Social Security or Supplementary Security Income benefits should be routinely accepted as a protected filing date for benefits if a formal application is completed within ninety days.

Within reason, individuals should have the right to choose the type of service they prefer and the service they choose should be competent and courteous.

Social Security District and Branch Offices should be located in convenient, well-lighted and well-maintained areas of a community. Access by public transportation should be a major consideration in site selection, but adequate parking should also be available. Properly designed signs and locator maps

should direct clients to offices located in multiple-office complexes or malls. Handicapped access should be provided at every location.

District and Branch Offices should remain accessible by telephone. Efforts to intercept all callers and demand use of an 800 number has left clients and family members of Social Security employees unable to reach local offices in emergencies.

Regardless of the type of service, claims and service representatives must give each client adequate time to fully understand the information being provided or the questions being asked by the client in order to be able to respond appropriately and accurately.

Social Security applicants are entitled to timely service, including appointments and hearings scheduled with a minimum of delay, timely issuance of initial and reconsideration determinations and hearing decisions, and timely post-entitlement changes.

Because SSA has selected certain work activities for productivity measurements, other work activities are frequently neglected such as post-entitlement name and address changes and underpayment recomputations.

Four to six week waits for appointments, which are now commonplace, highlight the inadequacy of present staffing. Such waits aggravate financial hardship, particularly for individuals filing disability claims. Applicants who make appointments to apply for benefits should be assisted in completing their applications during the appointment so that return visits are not required. Every effort should be made to be responsive to requests for walk-in service, especially for persons recently bereaved who need to report a death or file for survivor benefits or for those who have traveled extensive distances.

Wage records should be posted in a timely manner and every effort made to insure their accuracy through reconciliation with IRS tax records.

Recent problems with reconciliation of earnings records highlights the necessity to give priority attention to this issue. Accuracy of benefit payments depends on the integrity of wage records which are thirty to forty years old.

In addition to the above rights, Rep. Edward Roybal has introduced independent agency legislation (H.R.46), which would establish a Beneficiary Bill of Rights. Senator David Pryor introduced independent agency legislation last Congress (S. 765) which had similar provisions. We would refer you to these proposals for additional provisions.

Sincerely,

William J. Lessard Jr.

William J. Lessard, Jr.
Director of Policy and Research

cc. Robert J. Leonard
Chief Counsel
Committee on Ways and Means

Chairman JACOBS. Well, the committee thanks you for your testimony. I believe that concludes the hearing.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

The Honorable Bill Archer
Statement for Social Security Hearing 3/1/89

I am pleased that the Social Security Subcommittee has earmarked the independent agency bill for its first hearing of the 101st Congress. As a long-standing advocate of this proposal, and an original co-sponsor of H.R. 791, I urge the Subcommittee to expedite consideration of this bill.

The resurgent economy of the Reagan years has helped to restore the trust funds to solvency. The financial stability of the system seems assured for many years to come.

It is appropriate, therefore, to turn our attention to promoting administrative stability. By comparison the Reagan years provided more leadership stability than the Social Security Administration had experienced in recent years -- three Commissioners or Acting Commissioners in eight years. Still, when one takes into account the fact that the Department of Health, Education, and Welfare became the Department of Health and Human Services and itself had three Secretaries, it is obvious that SSA, in geologic terms, rests on an active fault line.

At this point, I want to compliment the leadership shown by Commissioner Hardy. I commend her efforts to restore public confidence in the social security program.

Still, no matter how capable the individual, each leader brings his or her own management style and priorities. Frequent leadership changes are disruptive. H.R. 791 will, I believe, establish a more permanent structure, giving SSA managers more direct authority to administer the programs for which they are responsible.

In addition, the bipartisan composition of the Board should help to distance SSA from some of the political turmoil that has handicapped some management initiatives.

While I do not consider that making SSA an independent agency is a panacea, I do believe it is a necessary step in improving program administration and management accountability. Ultimately, the public will be better served, and that must always be the overriding goal.

Edwin R. Miner, Hoosier Coordinator
Committee to Correct Inequities in
Social Security and Medicare, Inc
401 Fishers, Indiana 46038
(317) 841-3910

March 5, 1989

Written comments for the printed record of the Hearing on H.R. 791, The Social Security Administrative Reform Bill of 1989, held on March 1, 1989 by the Social Security Subcommittee of the House Ways and Means Committee.

Mr. Chairman:

The stated aim of H.R. 791 is to create a more stable administrative structure for social security by establishing an independent agency with administrative responsibility for the old age, survivors, and disability insurance program (Title II) and for the Supplemental Security Income program (Title XVI).

The Committee should have addressed all similiar legislation to make the SSA an independent agency at the same hearing. What makes H.R. 791 more viable than H.R. 46? H.R. 46 would put the agency under the non-partisan direction of a five member board to be appointed by the President and approved by the Senate. Under this plan no more than three members could be from the same political party and they would serve staggered terms. It seems to me that this bill might have more stability than H.R. 791!

Legislation to make SSA an independent agency was introduced in the 99th Congress, where it passed the House by a vote of 401 to zero; and yet Congress, today, is still trying to make the SSA an independent agency. Once again, Congress is looking to "gimmicks" that cannot succeed unless there is a National will to remove the Trust Funds from the reach of lawmakers. Social Security is too important to the lives and well-being of millions of Americans for it to be managed according to the latest political whims.

Recommended matters for Congressional consideration to bring stability to the Social Security Administration are as follows:

Protect the Social Security Administration from partisan politics by restoring the original status as an independent agency and providing it with professional management and a bi-partisan governing board.

Remove Social Security Trust Fund operations completely from the budget process including all calculations of the annual deficit reduction targets.

Change Social Security financing to establish a reserve equal to the amount needed to maintain a healthy Trust Fund Reserve and the payment of full and fair benefits to current and future retirees including correction of the Social Security "Notch" inequity.

Respectfully yours,

Edwin R. Miner

Edwin R. Miner

STATEMENT OF
THE HONORABLE MARY ROSE OAKAR

MR. CHAIRMAN:

THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS SUBCOMMITTEE. I AM PLEASED TO APPEAR IN FRONT OF YOU TO REGISTER MY STRONG SUPPORT FOR H.R. 791, YOUR BILL TO ESTABLISH THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY. I ALSO WANT TO EXPRESS MY THANKS FOR THE EXCELLENT WORK YOU AND YOUR STAFF HAVE DONE TO CREATE THIS IMPORTANT LEGISLATION AND HOLD THIS HEARING.

MR. CHAIRMAN, H.R. 791 REPRESENTS AN IMPORTANT STEP TOWARD PROVIDING SENIOR CITIZENS THE TRUE INCOME SECURITY THEY DESERVE. OVER THE LAST SEVERAL YEARS, OLDER AMERICANS HAVE BEEN ASSAULTED WITH A CONSTANT BARRAGE OF NEGATIVE STORIES ABOUT THE HEALTH OF THE SOCIAL SECURITY SYSTEM. IN 1983, THE PRIMARY PROBLEM WITH THE SOCIAL SECURITY SYSTEM WAS THE POSSIBILITY OF INSUFFICIENT INCOME TO MEET THE NEEDS OF FUTURE GENERATIONS WHO CONTRIBUTED TO THE TRUST FUNDS. SINCE THAT TIME, THE CONGRESS HAS CREATED A POLICY THAT STABILIZED THE SYSTEM, BUT ADDITIONAL PROBLEMS HAVE ARISEN -- PROBLEMS THAT HAVE SHAKEN THE FAITH OF THE AMERICAN PEOPLE. AMONG THE MOST PROMINENT PROBLEMS ARE:

1. THE USE OF SOCIAL SECURITY TRUST FUND RESERVES -- RESERVES NEEDED TO FUND THE BENEFIT NEEDS OF BABY BOOM RETIREES -- ARE BEING USED TO PAY FOR GENERAL GOVERNMENT OPERATIONS. THIS ACTION DIRECTLY CONTRADICTS THE SOCIAL CONTRACT WE MADE WITH THE AMERICAN PEOPLE TO ENSURE THE SAFETY OF THE SOCIAL SECURITY SYSTEM AND ITS TRUST FUNDS.

2. THE ACCOUNTING DISPARITIES THAT HAVE EXISTED BETWEEN THE INTERNAL REVENUE SYSTEM AND THE SOCIAL SECURITY ADMINISTRATION THAT HAS LEAD TO AN INACCURATE ACCOUNTING OF CONTRIBUTIONS TO THE SOCIAL SECURITY TRUST FUNDS.

3. THE SOCIAL SECURITY NOTCH PROBLEM.

IN SPITE OF THESE DIFFICULTIES, I FEEL THE CONGRESS HAS MADE ENORMOUS PROGRESS. INCLUDED IN THAT PROGRESS IS THE EXCELLENT POSSIBILITY OF PASSING H.R. 791, THE BILL WE HAVE BEFORE US TODAY.

MR. CHAIRMAN, I FIRMLY BELIEVE H.R. 791 WILL GO A LONG WAY TOWARD RELIEVING THE FEARS OF MANY OLDER AMERICANS AND THEIR CHILDREN ABOUT THE STABILITY OF THE SOCIAL SECURITY SYSTEM. ESTABLISHING THE SOCIAL SECURITY ADMINISTRATION AS A SEPARATE, INDEPENDENT AGENCY SHOULD DECREASE THE LIKELIHOOD OF POLITICS ENTERING INTO THE ADMINISTRATION OF SOCIAL SECURITY BENEFITS. I THINK WE CAN ALL AGREE THAT WE HAVE SEEN ENOUGH OF THIS DESTABILIZING INTERFERENCE.

MR. CHAIRMAN, I ALSO WANT TO EXPRESS MY STRONG SUPPORT FOR SPECIFIC PROVISION OF YOUR BILL; NAMELY, THE CREATION OF THE SOCIAL SECURITY BOARD. THIS BOARD SHOULD HELP TO GUIDE THE DAY-TO-DAY OPERATIONS OF THE ADMINISTRATION AS WELL AS THE LONG-TERM HEALTH OF THE TRUST FUNDS. I PARTICULARLY SUPPORT THE PROVISION WHICH CALLS FOR STAGGERED SIX YEAR TERMS FOR EACH OF THE BOARD MEMBERS. THIS PORTION OF YOUR PLAN WILL ACT AS A BRAKE AGAINST FUTURE POLITICAL MISMANAGEMENT. THE BOARD IS A FAR-SIGHTED CONCEPT AND I WANT TO COMMEND YOU ON ITS INCLUSION INTO YOUR LEGISLATION.

FURTHERMORE, THE CREATION OF THE POSITIONS OF EXECUTIVE DIRECTOR AND THE DEPUTY DIRECTOR IS A POSITIVE STEP. IN ADDITION TO THE GENERAL COUNSEL, INSPECTOR GENERAL AND BENEFICIARY OMBUDSMAN, THEY SHOULD PROVIDE THE NEEDED DAY-TO-DAY ADMINISTRATIVE DIRECTION FOR THE NEW AGENCY. INDEED, I AM VERY IMPRESSED WITH THE BILL'S PROVISIONS FOR THE MAKE-UP OF THE AGENCY'S STAFF.

MR. CHAIRMAN, IN SUMMARY, I WANT TO SAY THAT YOU AND YOUR STAFF HAVE PRODUCED AN EXCELLENT BILL. THE CONTENTS OF THE LEGISLATION, ALONG WITH THE RESULTING POSITIVE CHANGES IT WILL BRING, WILL HELP TO PRESERVE AND ENSURE THE INTEGRITY OF OUR SOCIAL SECURITY SYSTEM. SENIOR CITIZENS AND THEIR CHILDREN, WHO, QUITE FRANKLY, HAVE DOUBTS ABOUT THE FUTURE OF THE SOCIAL SECURITY SYSTEM, WILL BE GRATEFUL FOR YOUR EFFORTS. I WANT TO OFFER MY THANKS FOR YOUR HARD WORK AND I ALSO WANT TO URGE THE MEMBERS OF THIS SUBCOMMITTEE AND THE MEMBERS OF THIS POWERFUL FULL COMMITTEE TO VOTE FOR PASSAGE OF THE BILL AS SOON AS POSSIBLE. THIS IS AN IDEA WHO'S TIME HAS COME.

THANK YOU.

Prepared Statement of
Representative Edward R. Roybal

Hearing on Establishing the Social Security Administration
As An Independent Agency

Before the Subcommittee on Social Security
Committee on Ways and Means

March 1, 1989

I commend Chairman Jacobs for convening this important hearing on establishing the Social Security Administration (SSA) as an independent agency. I have become increasingly concerned about the critical need to improve services to current and future beneficiaries by providing greater accountability and leadership among SSA's leadership.

Over the past three Congresses, the Select Committee on Aging has heard substantial testimony concerning the significant administrative problems which have arisen from a lack of continuity at the Social Security Administration. There have been widespread reports that the quality of service to the public has been deteriorating. Complex problems involving SSA's automation process, management information system, staffing policies, procedures for appeals, and other policies have emerged, making it clear that leadership which is stable and accountable for improving administrative performance is critical to the agency's successful operation. It is deplorable that there have been ten commissioners or acting commissioners of SSA within the past fifteen years. How can we expect to have an effectively run organization under these conditions?

I firmly believe that many of the service problems which have plagued SSA over the past few years could be alleviated by establishing SSA as an independent agency. In the 98th Congress I introduced legislation (H.R. 5984), to create a board-governed independent agency. This bill established the Social Security Administration as an agency separate from the Department of Health and Human Services with an appointed 5-member bipartisan Board, and designated Offices of Commissioner, Deputy Commissioner, General Counsel, Hearings and Appeals, Chief Actuary, Policy and Legislation, and Social Security Ombudsman. The bill also included a Citizens Advisory Council and a "beneficiary bill of rights" providing for: fair and equitable treatment of all persons; prohibition against discrimination on account of age, sex, race, creed, color, handicap, national origin, or economic condition; prompt, professional, and effective services which are accessible to the public; timely and proper benefit payments; and a full, fair, and impartial appeals process. I introduced similar legislation, H.R. 46, in this Congress.

I am extremely pleased that Representative Jacobs has introduced H.R. 791. This bill would make significant strides toward improving SSA's delivery of services and creating greater accountability. Although H.R. 791 contains many of the components of my original bill, I would urge that it include a "beneficiary bill of rights," since I believe we need to place stronger safeguards to protect the primary mission of SSA; to provide responsive, effective, and timely service to elderly and disabled persons.

I intend to work with Representative Jacobs to ensure that this legislation again passes in the House. I hope the Senate agrees that these advancements must be made during this Congress. Social Security is too important to the lives and well-being of millions of Americans for it to continue to be managed according to the latest political whims.

STATEMENT FOR THE RECORD OF
THE HONORABLE THOMAS J. TAUKE
HEARING OF THE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SOCIAL SECURITY
MARCH 1, 1989

Mr. Chairman, I commend you for convening this important hearing on the need to establish an independent Social Security agency. I continue to strongly support establishing an independent agency and also to protect the Social Security Trust Fund and thereby beneficiaries from potential budgetary cuts. Your legislative package, Mr. Chairman, addresses these issues, and I am pleased to join you in support of H. R. 790 and 791.

I am here today to urge you to expedite consideration of H. R. 790 and 791. The House unanimously supported an independent agency bill during the 99th Congress and I am confident that this proposal will attract the same consensus from the 101st Congess. While I may be preaching to the choir, I want to emphasize to you the major reasons for establishing an independent Social Security agency. First, establishing an independent agency would take a giant step toward stronger public confidence in the Social Security system. Secondly, management and administration of Social Security programs would improve in an independent agency. Last, an independent agency would remove Social Security from political and budgetary battles.

Virtually all Americans have a stake in Social Security and benefit either directly (in the form of benefits and improved economic security) or indirectly (by benefit payments and greater income security for relatives and friends). As long as the Social Security Administration (SSA) remains within the Department of Health and Human Services (HHS), the system and its beneficiaries will be subject to changes in Social Security policy and budget by the Office of Management and Budget, HHS, the White House and by the Congress.

The public's confidence in Social Security has been severely tested during this decade. Consider the following:

in 1981, SSA implemented the Continuing Disability Review process which caused thousands of Disability beneficiaries to be unjustly removed from the rolls;

in 1983, Congress enacted legislation to rescue the financially unstable system from the brink of bankruptcy;

in 1985, SSA proposed to close more than 1,000 field offices and thus, remove Social Security from local communities;

in 1985, the Treasury "raided" the Social Security Trust Fund to avoid exceeding the public debt ceiling and;

in 1988, SSA drafted a proposal to overhaul the adjudicative process for denied claims.

The public's concern has been well-founded. In each of these instances, the stability of the Social Security system was shaken. I contend that there would be more continuity in policy and planning if the SSA was an independent agency. Long-term policy-making would replace short-sighted, ill-conceived budgetary proposals. Frequent changes in the direction of policy simply underscore the public's tendency to distrust proposals that affect Social Security.

The SSA occasionally experiences difficulties with administrative and operational activities as a result of interference from outside of the agency. Few argue that the management and administration of the SSA would improve significantly if Social Security was an independent agency, i.e., implementing the new computer system, beginning nationwide teleservice, developing new technologies, among other activities within SSA. Without budgetary pressures to produce programmatic savings, the outcome of SSA controversial proposals such as the initiative to down-size the agency and the proposal to close offices could have been avoided. There is no doubt in my mind that the public would be better served by independent decision-making on resource allocation.

Social Security does not contribute to the massive federal budget deficit and should not be on-the-table during deficit reduction negotiations. To the contrary, Social Security camouflages an ever increasing portion of the federal budget deficit. Last year, the Social Security Trust Fund reduced the size of the deficit by more than $50 billion. A serious flaw in the Gramm-Rudman-Holling deficit reduction law contributes to the erosion of the public's confidence in the system. While Social Security benefits are exempt from a possible sequestration order, the Trust Fund is counted in deficit calculation. I can assure you that public awareness on this issue is on the rise. I am frequently contacted by my constituents who are alarmed by counting the Social Security Trust Fund in deficit reduction efforts.

An additional issue of concerns for Social Security beneficiaries is the relationship of the Trust Fund to general governmental financing. Since the Secretary of the Treasury purchases treasury bill with collected payroll taxes, and those payments are transferred to general revenues, the Social Security Trust Fund provides capital with which the bills are paid. The public's perception of the Trust Fund is quite different -- the Trust Fund is viewed in the similar manner as a bank account. The problem is that, although the Treasury accounts for the Social Security Trust Fund assets, will the money be there when the system needs to tap into the reserves to meet benefit promises?

Mr. Chairman, your legislation, H. R. 790, addresses my concerns about misusing the Social Security Trust Fund assets. In particular, I concur with you that it is important to ensure that Social Security benefits will be paid regardless of a debt-ceiling crisis. I also support requiring that the Treasury invest tax receipts as soon as the assets are collected. Purchasing treasury bills on this basis will earn the Social Security Trust Fund additional interest payments. I believe that public faith in the future of Social Security is in serious jeopardy as long as Social Security continues to be treated as a political football subject to too many coaches' game strategies.

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